Supreme Court, U. S.
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APPENDIX
Vol. II—Exhibits

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1888

UNITED STATES OF AMERICA,
Petitioner.

—v.—

STATE OF ALASKA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED JUNE 17, 1974
CERTIORARI GRANTED DECEMBER 9, 1974

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PART IV.

PRIOR CORRESPONDENCE RELATIVE TO BEHRING SEA, ALASKA, THE SEA OF OKHOTSK, AND THE RUSSIAN UKASE OF 1821.

No. 161.*

Mr. Poletica to Mr. Adams.

[Translation.]

WASHINGTON, *January* 30 [*February* 11], 1822.

The undersigned, envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of all the Russias, in consequence of orders which have lately reached him, hastens herewith to transmit to Mr. Adams, Secretary of State in the Department of Foreign Affairs, a printed copy of the regulations adopted by the Russian-American Company, and sanctioned by His Imperial Majesty, relative to foreign commerce in the waters bordering the establishments of the said company on the northwest coast of America.

The undersigned conceives it to be, moreover, his duty to inform Mr. Adams that the Imperial Government, in adopting the regulation, supposes that a foreign ship, which shall have sailed from a European port after the 1st of March, 1822, or from one of the ports of the United States after the 1st of July of the same year, can not lawfully pretend ignorance of these new measures.

The undersigned, etc.,

PIERRE DE POLETICA.

[Inclosure 1.]

Edict of His Imperial Majesty, Autocrat of all the Russias.

The directing senate maketh known unto all men:

Whereas in an edict of His Imperial Majesty, issued to the directing senate on the 4th day of September, and signed by His Majesty's own hand, it is thus expressed:

"Observing, from reports submitted to us, that the trade of our subjects on the Aleutian Islands and on the northwest coast of America, appertaining unto Russia, is subject, because of secret and illicit traffic, to oppression and impediments; and finding that the principal cause of these difficulties is the want of rules establishing the boundaries for navigation along these coasts, and the order of naval communication, as well in these places as on the whole of the eastern coast of Siberia and the Kurile Islands, we have deemed it necessary to determine these communications by specific regulations, which are hereto attached.

* Nos. 161 to 173, inclusive, are here reprinted from "American State Papers, Foreign Relations."

BEST COPY AVAILABLE

"In forwarding these regulations to the directing senate, we command that the same be published for universal information, and that the proper measures be taken to carry them into execution."

COUNT D. GURIEV,
Minister of Finances.

It is therefore decreed by the directing senate that His Imperial Majesty's edict be published for the information of all men, and that the same be obeyed by all whom it may concern.

[The original is signed by the directing senate.]

Printed at St. Petersburg. In the senate, September 7, 1821.

[On the original is written, in the handwriting of His Imperial Majesty, thus:]

Be it accordingly,

ALEXANDER.

KAMENNOY OSTHOVF, *September* 4, 1821.

[Inclosure II.]

Rules established for the limits of navigation and order of communication along the coast of the Eastern Siberia, the northwestern coast of America, and the Aleutian, Kurile, and other islands.

SEC. 1. The pursuits of commerce, whaling, and fishing, and of all other industry, on all islands, ports, and gulfs, including the whole of the northwest coast of America, beginning from Behring Strait to the fifty-first degree of northern latitude; also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands from Behring Strait to the south cape of the island of Urup, viz, to 45° 50′ northern latitude, are exclusively granted to Russian subjects.

SEC. 2. It is therefore prohibited to all foreign vessels not only to land on the coasts and islands belonging to Russia, as stated above, but also to approach them within less than a hundred Italian miles. The transgressor's vessel is subject to confiscation, along with the whole cargo.

SEC. 3. An exception to this rule is to be made in favor of vessels carried thither by heavy gales, or real want of provisions, and unable to make any other shores but such as belong to Russia; in these cases they are obliged to produce convincing proofs of actual reason for such an exception. Ships of friendly governments, merely on discoveries, are likewise exempt from the foregoing rule (section 2). In this case, however, they must previously be provided with passports from the Russian minister of the navy.

No. 165.

Mr. Adams to Mr. Poletica.

DEPARTMENT OF STATE,
Washington, February 25, 1822.

SIR: I have the honor of receiving your note of the 11th instant, inclosing a printed copy of the regulations adopted by the Russian American Company, and sanctioned by His Imperial Majesty, relating to the commerce of foreigners in the waters bordering on the establishments of that company upon the northwest coast of America.

I am directed by the President of the United States to inform you that he has seen with surprise, in this edict, the assertion of a territorial claim on the part of Russia, extending to the fifty first degree of north latitude on this continent, and a regulation interdicting to all commercial vessels other than Russian, upon the penalty of seizure and confiscation, the approach upon the high seas within 100 Italian miles of the shores to which that claim is made to apply. The relations of

the United States with His Imperial Majesty have always been of the most friendly character; and it is the earnest desire of this Government to preserve them in that state. It was expected, before any act which should define the boundary between the territories of the United States and Russia on this continent, that the same would have been arranged by treaty between the parties. To exclude the vessels of our citizens from the shore, beyond the ordinary distance to which the territorial jurisdiction extends, has excited still greater surprise.

This ordinance affects so deeply the rights of the United States and of their citizens that I am instructed to inquire whether you are authorized to give explanations of the grounds of right, upon principles generally recognized by the laws and usages of nations, which can warrant the claims and regulations contained in it.

I avail, etc.,

JOHN QUINCY ADAMS.

No. 166.

Mr. Poletica to Mr. Adams.

WASHINGTON, *February* 28, 1822.

Mr. Poletica replied on the 28th of the same month, and after giving a summary of historical incidents which seemed to him to establish the title of Russia to the territories in question by first discovery, said:

"I shall be more succinct, sir, in the exposition of the motives which determined the Imperial Government to prohibit foreign vessels from approaching the northwest coast of America belonging to Russia within the distance of at least 100 Italian miles. This measure, however severe it may at first appear, is, after all, but a measure of prevention. It is exclusively directed against the culpable enterprises of foreign adventurers, who, not content with exercising upon the coasts above mentioned an illicit trade very prejudicial to the rights reserved entirely to the Russian American Company, take upon them besides to furnish arms and ammunition to the natives in the Russian possessions in America, exciting them likewise in every manner to resist and revolt against the authorities there established.

"The American Government doubtless recollects that the irregular conduct of these adventurers, the majority of whom was composed of American citizens, has been the object of the most pressing remonstrances on the part of Russia to the Federal Government from the time that diplomatic missions were organized between the countries. These remonstrances, repeated at different times, remain constantly without effect, and the inconveniences to which they ought to bring a remedy continue to increase. • • •

"I ought, in the last place, to request you to consider, sir, that the Russian possessions in the Pacific Ocean extend, on the northwest coast of America, from Behring's Strait to the fifty-first degree of north latitude, and on the opposite side of Asia and the islands adjacent, from the same strait to the forty-fifth degree. The extent of sea of which these possessions form the limits comprehends all the conditions which are ordinarily attached to *shut seas* (mers fermées), and the Russian Government might consequently judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners. But it preferred only asserting its essential rights, without taking any advantage of localities."

No. 167.

Mr. Adams to Mr. Poletica.

DEPARTMENT OF STATE,
Washington, March 30, 1822.

SIR: I have had the honor of receiving your letter of the 28th ultimo, which has been submitted to the consideration of the President of the United States.

From the deduction which it contains of the grounds upon which articles of regulation of the Russian-American Company have now, for the first time, extended the claim of Russia on the northwest coast of America to the fifty-first degree of north latitude, its only foundation appears to be the existence of the small settlement of Novo Archangelsk, situated, not on the American continent, but upon a small island in latitude 57°; and the principle upon which you state that this claim is now advanced is, that the fifty-first degree is equidistant from the settlement of Novo Archangelsk and the establishment of the United States at the mouth of the Columbia River. But, from the same statement, it appears that, in the year 1799, the limits prescribed by the Emperor Paul to the Russian-American Company were fixed at the fifty-fifth degree of latitude, and that, in assuming now the latitude 57°, a new pretension is asserted, to which no settlement made since the year 1799 has given the color of a sanction.

This pretension is to be considered not only with reference to the question of territorial right, but also to that prohibition to the vessels of other nations, including those of the United States, to approach within 100 Italian miles of the coasts. From the period of the existence of the United States as an independent nation, their vessels have freely navigated those seas, and the right to navigate them is a part of that independence.

With regard to the suggestion that the Russian Government might have justified the exercise of sovereignty over the Pacific Ocean as a close sea, because it claims territory both on its American and Asiatic shores, it may suffice to say that the distance from shore to shore on this sea, in latitude 51° north, is not less than 90° of longitude, or 4,000 miles.

As little can the United States accede to the justice of the reason assigned for the prohibition above mentioned. The right of the citizens of the United States to hold commerce with the aboriginal natives of the northwest coast of America, without the territorial jurisdiction of other nations, even in arms and munitions of war, is as clear and indisputable as that of navigating the seas. That right has never been exercised in a spirit unfriendly to Russia; and although general complaints have occasionally been made on the subject of this commerce by some of your predecessors, no specific ground of charge has ever been alleged by them of any transaction in it which the United States were, by the ordinary laws and usages of nations, bound either to restrain or to punish. Had any such charge been made, it would have received the most pointed attention of this Government, with the sincerest and firmest disposition to perform every act and obligation of justice to yours which could have been required. I am commanded by the President of the United States to assure you that this disposition will continue to be entertained, together with the earnest desire that the harmonious relations between the two countries may be preserved.

Relying upon the assurance in your note of similar dispositions reciprocally entertained by His Imperial Majesty towards the United States, the President is persuaded that the citizens of this Union will remain unmolested in the prosecution of their lawful commerce, and that no effect will be given to an interdiction manifestly incompatible with their rights.

I am, etc.,

JOHN QUINCY ADAMS.

No. 168.

Mr. Poletica to Mr. Adams.

WASHINGTON, *April* 2, 1822.

Mr. Poletica replied on the 2d of April following, and after again endeavoring to prove the title of Russia to the northwest coast of America from Behring Straits to the fifty-first degree of north latitude, said:

"In the same manner the great extent of the Pacific Ocean at the fifty-first degree of latitude can not invalidate the right which Russia may have of considering that part of the ocean as close. But as the Imperial Government has not thought fit to take advantage of that right, all further discussion on this subject would be idle.

"As to the right claimed for the citizens of the United States of trading with the natives of the country of the northwest coast of America, without the limits of the jurisdiction belonging to Russia, the Imperial Government will not certainly think of limiting it, and still less of attacking it there. But I can not dissemble, sir, that this same trade beyond the fifty-first degree will meet with difficulties and inconveniences, for which the American owners will only have to accuse their own imprudence after the publicity which has been given to the measures taken by the Imperial Government for maintaining the rights of the Russian-Amerian Company in their absolute integrity.

"I shall not finish this letter without repeating to you, sir, the very positive assurance which I have already had the honor once of expressing to you that in every case where the American Government shall judge it necessary to make explanations to that of the Emperor, the President of the United States may rest assured that these explanations will always be attended to by the Emperor, my august sovereign, with the most friendly, and consequently the most conciliatory, dispositions."

No. 169.

Baron Tuyll to Mr. Adams.

[Translation.]

WASHINGTON, *April* 12 (24), 1823.

The undersigned, envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of all the Russias near the United States of America, has had the honor to express to Mr. Adams, Secretary of State, the desire of the Emperor, his master, who is ever animated by

a sincere friendship towards the United States, to see the discussions that have arisen between the cabinets of St. Petersburg and Washington, upon some provisions contained in the ukase of the 11th (16th) of September, 1821, relative to the Russian possessions on the northwest coast of America, terminated by means of friendly negotiation.

These views of His Imperial Majesty coincide with the wish expressed some time since on the part of the United States in regard to a settlement of limits on the said coast.

The ministry of the Emperor having induced the British ministry to furnish Sir Charles Bagot, ambassador of His Majesty the King of England near His Imperial Majesty, with full powers necessary for the negotiation about to be set on foot for reconciling the difficulties existing between the two courts on the subject of the northwest coast, the English Government is desirous of acceding to that invitation.

The undersigned has been directed to communicate to Mr. Adams, Secretary of State, in the name of his august master, and as an additional proof of the sentiments entertained by His Imperial Majesty towards the President of the United States and the American Government, the expression of his desire that Mr. Middleton be also furnished with the necessary powers to terminate with the Imperial cabinet, by an arrangement founded on the principle of mutual convenience, all the differences that have arisen between Russia and the United States in consequence of the law published September 4 (16), 1821.

The undersigned thinks he may hope that the Cabinet of Washington will, with pleasure, accede to a proposition tending to facilitate the completion of an arrangement based upon sentiments of mutual good will and of a nature to secure the interests of both countries.

He profits, etc.,

TUYLL.

No. 170.

Mr. Adams to Baron Tuyll.

DEPARTMENT OF STATE,
Washington, May 7, 1823.

The undersigned, Secretary of State of the United States, has submitted to the consideration of the President the note which he had the honor of receiving from the Baron de Tuyll, envoy extraordinary and minister plenipotentiary from His Imperial Majesty the Emperor of all the Russias, dated the 12th (24th) of the last month.

The undersigned has been directed, in answer to that note, to assure the Baron de Tuyll of the warm satisfaction with which the President receives and appreciates the friendly dispositions of His Imperial Majesty toward the United States; dispositions which it has been, and is, the earnest desire of the American Government to meet with corresponding returns, and which have been long cemented by the invariable friendship and cordiality which have subsisted between the United States and His Imperial Majesty.

Penetrated with these sentiments, and anxiously seeking to promote their perpetuation, the President readily accedes to the proposal that the minister of the United States at the court of His Imperial Majesty should be furnished with powers for negotiating, upon principles adapted to those sentiments, the adjustment of the interests and rights which

have been brought into collision upon the northwest coast of America, and which have heretofore formed a subject of correspondence between the two Governments, as well at Washington as at St. Petersburg.

The undersigned is further commanded to add that, in pursuing, for the adjustment of the interests in question, this course, equally congenial to the friendly feelings of this nation towards Russia and to their reliance upon the justice and magnanimity of his Imperial Majesty, the President of the United States confides that the arrangements of the cabinet of St. Petersburg will have suspended the possibility of any consequences resulting from the ukase to which the Baron de Tuyll's note refers which could affect the just rights and the lawful commerce of the United States during the amicable discussion of the subject between the Governments respectively interested in it.

The undersigned, etc.,

JOHN QUINCY ADAMS.

No. 171.

Mr. Adams to Mr. Middleton.

No. 16.] DEPARTMENT OF STATE,
Washington, July 22, 1823.

SIR: I have the honor of inclosing herewith copies of a note from Baron de Tuyll, the Russian minister, recently arrived, proposing, on the part of His Majesty the Emperor of Russia, that a power should be transmitted to you to enter upon a negotiation with the ministers of his Government concerning the differences which have arisen from the Imperial ukase of 4th (16th) September, 1821, relative to the northwest coast of America, and of the answer from this Department acceding to this proposal. A full power is accordingly inclosed, and you will consider this letter as communicating to you the President's instructions for the conduct of the negotiation.

From the tenor of the ukase, the pretentions of the Imperial Government extend to an exclusive territorial jurisdiction from the forty-fifth degree of north latitude, on the Asiatic coast, to the latitude of fifty-one north on the western coast of the American continent; and they assume the right of interdicting the navigation and the fishery of all other nations to the extent of 100 miles from the whole of that coast.

The United States can admit no part of these claims. Their right of navigation and of fishing is perfect, and has been in constant exercise from the earliest times, after the peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain islands north of the fifty-fifth degree of latitude, and have no existence on the continent of America.

The correspondence between Mr. Poletica and this Department contained no discussion of the principles or of the facts upon which he attempted the justification of the Imperial ukase. This was purposely avoided on our part, under the expectation that the Imperial Government could not fail, upon a review of the measure, to revoke it altogether. It did, however, excite much public animadversion in this country, as the ukase itself had already done in England. I inclose herewith the North American Review for October, 1822, No. 37, which contains an

article (p. 370) written by a person fully master of the subject; and for the view of it taken in England I refer you to the fifty second number of the Quarterly Review, the article upon Lieutenant Kotzebue's voyages. From the article in the North American Review it will be seen that the rights of discovery, of occupancy, and of uncontested possession, alleged by Mr. Poletica, are all without foundation in fact. * * *

The right of the United States from the forty-second to the forty-ninth parallel of latitude on the Pacific Ocean we consider as unquestionable, being founded, first, on the acquisition, by the treaty of February 22, 1819, of all the rights of Spain; second, by the discovery of the Columbia River, first from sea, at its mouth, and then by land, by Lewis and Clarke; and third, by the settlement at its mouth in 1811. This territory is to the United States of an importance which no possession in North America can be to any European nation, not only as it is but the continuity of their possessions from the Atlantic to the Pacific Ocean, but as it offers their inhabitants the means of establishing hereafter water communications from the one to the other.

It is not conceivable that any possession upon the continent of North America should be of use or importance to Russia for any other purpose than that of traffic with the natives. This was, in fact, the inducement to the formation of the Russian American Company and to the charter granted them by the Emperor Paul. It was the inducement to the ukase of the Emperor Alexander. By offering free and equal access for a term of years to navigation and intercourse with the natives to Russia, within the limits to which our claims are indisputable, we concede much more than we obtain. It is not to be doubted that, long before the expiration of that time, our settlement at the mouth of the Columbia River will become so considerable as to offer means of useful commercial intercourse with the Russian settlements on the islands of the northwest coast.

With regard to the territorial claim, separate from the right of traffic with the natives and from any system of colonial exclusions, we are willing to agree to the boundary line within which the Emperor Paul had granted exclusive privileges to the Russian-American Company, that is to say, latitude 55°.

If the Russian Government apprehend serious inconvenience from the illicit traffic of foreigners with their settlements on the northwest coast, it may be effectually guarded against by stipulations similar to those, a draft of which is herewith subjoined, and to which you are authorized, on the part of the United States, to agree. * * *

I am, etc.,

JOHN QUINCY ADAMS.

[Inclosure.]

Draft of treaty between the United States and Russia.

ART. I. In order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the contracting parties, it is agreed that their respective citizens and subjects shall not be disturbed or molested, either in navigating or in carrying on their fisheries in the Pacific Ocean or in the South Seas, or in landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country; subject, nevertheless, to the restrictions and provisions specified in the two following articles.

ART. II. To the end that the navigation and fishery of the citizens and subjects of the contracting parties, respectively, in the Pacific Ocean or in the South Seas, may

as the benefits are equal and mutual, and the object of the convention, to avoid converting the exercise of a common right into a dispute about exclusive privilege, is secured by it.

I am, etc.,

JOHN FORSYTH.

No. 188.

Mr. Dallas to Mr. Forsyth.

No. 15.] LEGATION OF THE UNITED STATES OF AMERICA,
St. Petersburg, March 19, 1838.

SIR: The departure of a courier from the British legation to-morrow enables me to forward to you copies of two notes which have recently passed between Count Nesselrode and myself. They originate in the claim advanced on behalf of the owners of the *Loriot*, agreeably to your instructions of the 4th of May, 1837. Their interest, however, is far more extensive, the demand for private indemnity being merged in a question of national right, and the interpretation of the treaty negotiated in 1824 by my predecessor, Mr. Middleton.

* * * * * * *

I have, etc.,

G. M. DALLAS.

[Inclosure 1 in Mr. Dallas's No. 15.—Translation.]

Count Nesselrode to Mr. Dallas.

ST. PETERSBURG, *February* 23, 1838.

Mr. Dallas, envoy extraordinary and minister plenipotentiary of the United States of America, by his note of the 15th (27th) of August last, has thought proper to interpose in behalf of the claims preferred by Richard Blinn, a citizen of the United States, and master of the merchant brig *Loriot*. It appears from the above-mentioned note that in 1835 this vessel, having sailed for the northwest coast of America, arrived at Forrester's Island in latitude of 54° 55′ north, with the intention of employing the natives in hunting for sea-otters, and that a few days after his arrival he was ordered off by a brig of the Russian-American Company, without having been able to pursue his project. Mr. Blinn, in virtue of the stipulations of the convention of the 5th (17th) of April, 1824, and especially of the first article of that convention, now prefers complaints against the conduct of the Russian brig towards him, and asks indemnification for the losses sustained in consequence by the proprietors of the *Loriot*.

A claim of this nature, presented, too, by the representative of a power with which Russia is anxious to cultivate the most friendly relations, demanded the most serious attention on the part of the Imperial ministry. The Russian-American Company was accordingly asked, without delay, for minute information respecting all the circumstances connected with the above-mentioned facts, in order that it might be examined with an entire knowledge of the affair. This information has not yet reached the Imperial ministry, as the Russian-American Company has not to this moment received any special report concerning the ordering off of the *Loriot*. It appears, however, from the circumstances as stated in the very note of Mr. Dallas, as well as from a deposition made by one of the officers recently returned from those countries, that in notifying Mr. Richard Blinn to quit the shores where he was, the commander of the Russian brig did nothing more than conform with the instructions given to him at the expiration of the fourth article of the convention.

By examining the stipulations of that convention, with the spirit of equity which marks the character of Mr. Dallas, he will be convinced that the Imperial Government can not acknowledge the justice of the complaints of Mr. Blinn.

It is true, indeed, the first article of the convention of 1824, to which the proprietors of the *Loriot* appeal, secures to the citizens of the United States entire liberty of navigation in the Pacific Ocean, as well as the right of landing without disturbance

upon all points on the northwest coast of America, not already occupied, and to trade with the natives. But this liberty of navigation is subject to certain conditions and restrictions, and one of these restrictions is that stipulated by the fourth article, which has specially limited to the period of ten years the right on the part of the citizens of the United States to frequent, without disturbance, the interior seas, the gulfs, harbors, and creeks north of the latitude of 54° 40′. Now this period had expired more than two years before the *Loriot* anchored in the harbor of Tuckessan. In 1835 the Emperor's minister in the United States had received orders to call the attention of the cabinet at Washington expressly to the circumstance of the expiration of this period; and in consequence of the official note addressed on this subject by Baron de Krudener to the Secretary of State, the Government of the United States caused to be published, in the Washington newspaper, a statement that, as the period of ten years had expired on the 4th of April, 1834, "the governor of the Russian colonies had formally notified the commanders of American vessels in that quarter that they could no longer claim, under the convention, the right of landing without distinction, at all the harbors belonging to Russia on this coast."

If, then, notwithstanding so formal a warning which the Government of the United States had itself aided in conveying to the knowledge of the citizens of the Union, the owners of the *Loriot* ventured upon an expedition to coasts where they had for two years been interdicted from landing it appears that they should attribute only to themselves the ill success of this enterprise, and that the Imperial Government can not admit their claims, nor acknowledge their title to indemnification. In communicating these observations to Mr. Dallas, the undersigned flatters himself with the belief that he will admit the justice of them, and cause them to be viewed in the same light by his Government.

In this hope he prays the envoy to accept, etc.,

NESSELRODE.

[Inclosure 2 in Mr. Dallas's No. 15.]

Mr. Dallas to Count Nesselrode.

ST. PETERSBURG, *March* 5 (17), 1838.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America, had the honor to receive the answer of his excellency Count Nesselrode, vice-chancellor of the Empire, dated the 23d February, 1838, to the communication which the undersigned, conformably to the special charge of his Government, addressed to his excellency on the 15th (27th) of August, 1837, in relation to the interference of certain of his Imperial Majesty's armed forces with the merchant brig *Loriot*, owned and commanded by citizens of the United States, and prosecuting a trading voyage to the northwest coast of America.

The remoteness of the regions where the incidents occurred which constitute the foundation of the reclamation on behalf of the parties injured, and the known difficulty of obtaining circumstantial details of any event in that quarter, connected with the assurance of his excellency that the Imperial ministry had given to the subject its serious attention, must have engaged the undersigned to protracted silence, under the conviction that everything which the justice of the case required would ultimately be attained. The note, however, of his excellency, if accurately understood, dispenses with the necessity of additional information, and, adopting the statement of facts derived by the American Government from its citizens, would seem to remove all motive for further delay. An early notice, therefore, of the grounds upon which a recognition of the claim has been declined is impelled alike by a profound respect for the source whence they emanated, and by a sense of the peculiar importance with which they bear upon the relations and interests of the two countries.

The light in which the President of the United States regarded the treatment of Captain Blinn precluded the possibility of his supposing it warranted by the public authorities of Russia. He will hear, with painful surprise, that the subordinate by whom that treatment was inflicted did but obey the instructions with which he had been furnished in consequence of the expiration of the fourth article of the convention of 1821.

It will be recollected that more than two and a half years ago the American Secretary of State, Mr. Forsyth, in a letter of the 21st of July, 1835, addressed to His Imperial Majesty's minister then at Washington, the Baron de Krudener, expressed a wish to receive, as early as practicable, precise information of the measures His Imperial Majesty's Government had adopted or proposed to adopt in relation to the admission of American vessels into the harbors, bays, and rivers of the Russian settlements on the northwest coast of the continent; that this request was reiterated by Mr. Wilkins, the predecessor of the undersigned, in a communication of the 1st of

November, 1835; and that his excellency Count Nesselrode, in answer thereto, referring to the spring of 1836 as the earliest period at which an exact knowledge could be obtained of the measures which the local authorities had adopted, or which it would be necessary to adopt, left no room to doubt that they would then, or as soon as digested, be made known to the American Government. This information, so desirable as a basis for any corresponding measures to which the United States would have been urged by their uniform dispositions of amity towards Russia, as well as by a provident attention to the regularity and security of their own commerce, has never been imparted. Had the purport of the instruction, under which the *Loriot* was violently seized and driven from her voyage, been communicated, it would not have been allowed to work injury and loss to unoffending persons, without at least being first made the object of candid remonstrance, or of precautionary notice. And the President of the United States, unapprized of these regulations, or of the particular points of the northwest coast on which Russian establishments were newly formed, could not but view the abrupt proceeding to which Captain Blinn was subjected as an act, under any aspect, of the most unfriendly character. How far this sentiment will be changed or qualified by unexpectedly finding the slight on the American flag and the armed opposition to American trade to have been ordered, and to be now sanctioned, by the Government of His Imperial Majesty, upon the principles stated, the undersigned can not venture to foresee.

Nor is the "informal notice" (lying before the undersigned) published, at the repeated request of Baron de Krudener, in the Washington Globe on the 22d of August, 1835, to which his excellency has referred, susceptible, in the estimation of the undersigned, of a construction which can ascribe to the American Government, or any of its citizens, the knowledge that a voyage like the one contemplated by Captain Blinn was inconsistent with any colonial interdict or general pretension of the Imperial authorities. Far from it. That publication, while characteristic of the frank and confiding readiness with which the American Executive proceeded to execute a wish expressed by a power whose intercourse and relations inspire no distrust, compels, as is conceived, with undesigned deference, the opposite construction, and imports a recognition of the entire lawfulness of such a voyage. In this spirit, and in this only, was it originally framed, and has ever since, without a question, been understood by the Government and people of the United States. True, it adverts to a notice issued by the governor of the Russian colonies after the expiration of the fourth article of the convention, to the effect that the masters of American vessels could no longer claim the right they enjoyed under that fourth article of landing at all the landing places, without distinction, belonging to Russia on the northwest coast; and it further proceeds to observe to all interested in the trade that, under the second article of the same convention, it is necessary for all American vessels resorting to any point where there is a Russian establishment to obtain the permission of the governor or commander. To the scope of phraseology of this "informal notice" it is believed Baron de Krudener never, orally or in writing, took the slightest exception. It will surely be perceived by his excellency Count Nesselrode to contain no inhibition of trading voyages generally to the northwest coast of America, but, on the contrary, to confine its admonition expressly and precisely to "landing places belonging to Russia," and to "any point on the coast where there is a Russian establishment." Such landing places and such points were alone supposed to be embraced in the notice of Governor Wrangel, and were alone designated in the publication. American voyages to them were no longer as unembarrassed as during the operation of the fourth article of the convention, but to all other points of that vast and wild territory the freedom of American navigation and trade remained unimpaired. It formed no part of the purpose of Captain Blinn to visit, with or without permission, any landing place or point distinguished by Russian occupancy or establishment; and it is therefore submitted that, even supposing him to have read the paragraph adduced, he could at least deduce from it nothing adverse to his voyage.

The decision of the Imperial ministry is stated by his excellency the vice-chancellor to result from the very circumstances set forth in the note of the undersigned, as well as from an affidavit of an officer recently returned from the Russian colonies, and to be founded upon the convention of 1824. As the contents of the affidavit are not mentioned, they are presumed not to affect materially the narrative of the note, and certainly not to introduce any substantive assertion or denial adequate to give the case a totally new character, and to exact, by its own force merely, a judgment which could not be reached without it. The remarks, therefore, which the undersigned proposes to subjoin are necessarily restricted to the admitted allegations on behalf of Captain Blinn in connection with the stipulations of the treaty.

If, in pursuing this course, any injustice be done to the reasoning or views of the Imperial ministry, he will, on the slightest intimation, hasten to rectify it with the frankness which he esteems indispensable to the faithful discharge of his representative duty.

Avoiding a repetition of details heretofore enumerated, as well as their aggravat-

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ing features, the leading facts of reclamation are, that the brig *Loriot*, owned and commanded by American citizens, sailed from the Sandwich Islands on the 23d of August, 1836, bound to the northwest coast, to procure provisions and Indians for hunting sea-otter; that, having made Forrester's Island, she anchored in the harbor of Tuckessan, in latitude 54° 55' north; that no Russian establishment existed in that harbor; that four days afterwards, an armed brig of His Imperial Majesty's navy went into a neighboring harbor, called Tateskey, in latitude 54° 45' north; that no Russian establishment existed in this latter harbor; that she was boarded by officers from the armed brig, by whom her captain was first ordered to leave the dominions of Russia, and subsequently compelled to get under way and sail for the harbor of Tateskey; that when off the harbor of Tateskey she was, in threatening weather, refused permission to enter, and peremptorily again commanded to quit the waters of His Imperial Majesty; and, finally, that, owing exclusively to this interference of armed force, her voyage was abandoned, and she returned to the Sandwich Islands on the 1st of November. It is this plain and brief story, which the undersigned, by instruction of his Government, has termed inconsistent with the rights of American citizens, immemorially exercised and secured by the laws of nations, as well as by the stipulations of the first article of the convention of 1824, and entitling the parties injured to such indemnification as might on an investigation be found justly their due.

The right of the citizens of the United States to navigate the Pacific Ocean, and their right to trade with the aboriginal natives of the northwest coast of America, without the jurisdiction of other nations, are rights which constituted a part of their independence as soon as they declared it. They are rights founded in the law of nations, enjoyed in common with all other independent sovereignties, and incapable of being abridged or extinguished, except with their own consent. It is unknown to the undersigned that they have voluntarily conceded these rights, or either of them, at any time, through the agency of their Government, by treaty or other form of obligation, in favor of any community. Yet he deduces from the communication of his excellency, after having given it the careful consideration to which every act from such a source lays claim, as the only ground upon which the reclamation on behalf of Captain Hill is resisted, the proposition that the United States, by the convention of 1824, yielded to His Imperial Majesty the right to hold commerce, on the expiration of ten years, with the aboriginal natives on the northwest coast beyond the degree of 54° 40' north latitude. This proposition, if established, is unquestionably fatal to the pretensions of the master and owners of the *Loriot*. It bears, however, an aspect so detrimental to the interests of his countrymen, and to their attributes as an independent power, is so inconsistent with the past policy and principles of the American cabinets, and is withal of such minor importance to the prosperity and greatness of Russia, that the undersigned trusts its want of solid foundation will, on further reflection, be apparent and confessed.

The avowed objects of the convention between the United States and His Imperial Majesty, were "to cement the bonds of amity which unite them, and to secure between them the invariable maintenance of a perfect concord." The means of attaining these invaluable ends were embodied in its articles. There is first a mutual and permanent agreement, declaratory of their respective rights, without disturbance or restraint, to navigate and fish in any part of the Pacific Ocean, and to resort to its coasts upon points which may not already have been occupied, in order to trade with the natives. These rights pre-existed in each, and were not fresh liberties resulting from the stipulation. To navigate, to fish, and to coast, as described, were rights of equal certainty, springing from the same source, and attached to the same quality of nationality. Their exercise, however, was subjected to certain restrictions and conditions, to the effect that the citizens and subjects of the contracting sovereignties should not resort to points where establishments existed without obtaining permission; that no future establishments should be formed by one party north, nor by the other party south, of 54° 40' north latitude; but that, nevertheless, both might for a term of ten years, without regard to whether an establishment existed or not, without obtaining permission, without any hindrance whatever, frequent the interior seas, gulfs, harbors, and creeks, to fish and trade with the natives. This short analysis leaves, on the question at issue, no room for construction.

The view taken by his excellency Count Nesselrode rests upon the provision last referred to, contained in the fourth article of the convention. Of this it is essential to fix the true character. Does its limitation of ten years apply to the broad national right of resorting to unoccupied points of the coast? If it do not, the position taken is untenable. That it does not, would seem to be a conclusion of the gravest, as of the lightest scrutiny.

The renunciation of a prerogative so high and important, if designed would not have been left to mere inference from a disjointed paragraph, but would have been distinctly expressed in immediate connection with its first statement. No motive

can possibly be assigned for permitting an intended abandonment of such a right, formally declared in the first article, to lurk unseen in the varied language of the fourth article.

The power of resorting to unoccupied points of the coast existed in perpetuity by the laws of nations, and is so enunciated in the first article. To declare it afterwards to exist for ten years would be to insert a clause idle and without effect, providing for the temporary enjoyment of what had been previously pronounced permanent. But the interpretation of every instrument must be such as will, if possible, give substance and utility to each of its parts. Applied to points of the coast already occupied, the fourth article takes effect as a temporary exception to the perpetual prohibition of the second article; and the only consequence of the expiration of the term to which it is limited, is the revival and continued operation of that prohibition.

In employing, in the fourth article, the descriptive words "interior seas, gulfs, harbors, and creeks," there is a departure from the comprehensive phraseology of the first article, which is only to be explained by the fact that another idea was to be expressed. Nor is it difficult to understand what was really meant. The bonds of amity and perfect concord, which it was so desirable to cement and invariably maintain, would have been endangered, in peculiar localities, as to which doubts might naturally arise whether they were embraced in the first or the second article. If, however, at their openings, or upon their commanding headlands, or on their shores, an occupied point or establishment existed, it was thought expedient to let them take character from that incident, without any nice measurement of its range or influence, at the expiration of ten years; and, accordingly, the fourth article, avoiding too sudden a check of the actual account of trade, put a limit of time upon the liberty to frequent such places.

The undersigned submits that in no sense can the fourth article be understood as implying an acknowledgment, on the part of the United States, of the right of Russia to the possession of the coast above the latitude of 54° 40' north. It must, of course, be taken in connection with the other articles, and they have, in fact, no reference whatever to the question of the right of possession of the unoccupied parts. To prevent future collisions it was agreed that no new establishment should be formed by the respective parties to the north or south of the parallel mentioned; but the question of the right of possession beyond the existing establishments, as it stood previous to, or at the time of, the convention, was left untouched.

By agreeing not to form new establishments north of latitude 54° 40' the United States made no acknowledgment of the right of Russia to the territory above that line. If such an admission had been made, Russia, by the same construction of the article referred to, must have equally acknowledged the right of the United States to the territory south of the parallel. But that Russia did not so understand the article is conclusively proved by her having entered into a similar agreement in her subsequent treaty of 1825, with Great Britain, and having in that instrument acknowledged the right of possession of the same territory by Great Britain.

The United States can only be considered inferentially as having acknowledged the right of Russia to acquire, above the designated meridian, by actual occupation, a just claim to unoccupied lands. Until that actual occupation be taken, the first article of the convention recognizes the American right to navigate, fish, and trade, as prior to its negotiation. Such is esteemed the true construction of the convention; the construction which both nations are interested in affixing, as the benefits are equal and mutual, and the great object is secured of removing the exercise of a common right from the danger of becoming a dispute about exclusive privileges.

At the hazard of proving tedious, the undersigned has thus endeavored to convey to his excellency Count Nesselrode the views suggested by his recent communication.

The Government of the United States is ardent and uniform in its anxiety to cherish with that of Russia the most friendly relations; in the reciprocation of this sentiment the fullest confidence is felt. The citizens and subjects of the two countries, meeting only with feelings of cordiality and for purposes of mutual advantage, are rapidly reaping the fruits of a wise and beneficent international policy. Every year enlarges the sphere of their commercial intercourse, discloses the identity of their interests, and strengthens their ties of amity. In the persuasion that the enlightened councils of His Imperial Majesty will join with the American authorities in every effort consistent with the honor and rights of their respective nations, to rescue this condition of things from all danger of interruption, the undersigned earnestly invites a reconsideration of the ground upon which the claim of the owners of the *Loriot* has been dismissed.

With a consoling hope as to the result, he begs, etc.,

G. M. DALLAS.

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No. 189.

Mr. Dallas to Mr. Forsyth.

No. 16.] LEGATION OF THE UNITED STATES OF AMERICA,
St. Petersburg, April 16, 1838.

SIR: On the 21st of last month I received the answer of Count Nesselrode to the proposal made to him in my communication of the 28th of December, 1837, for the renewal of the fourth article of the convention of 1824, and I accompanied my acknowledgment of its receipt with a request for information as to the measures adopted or proposed to be adopted by His Imperial Majesty, respecting the admission of American vessels into the Russian establishments on the northwest coast. Copies of these two documents are annexed to this dispatch. Every act of an official character is preceded by so much deliberation and delay that I may not hope to hear further on this subject for some weeks to come.

The refusal to renew the article was far from unexpected. Although there may be much truth in the statements upon which that refusal is explained, it was foreseen that the grasping policy of the fur company would, in itself, be quite adequate to this result. I am unable to say how far the representation as to the extremely limited character of the American trade under the article be correct, nor how far my countrymen may be implicated in the sale of spirituous liquors, powder, and fire-arms to the natives in violation of the fifth article of the convention; nor whether complaints on the latter subject have or have not been made by the Russian authorities to those of the United States, invoking in designated cases the penalties prescribed by act of Congress. On none of these points do the archives of this legation furnish sources of information.

Nor would it, indeed, seem expedient, under any circumstances, to criticise the alleged motives for declining a revival of the expired stipulation. No consequence could follow but disagreement in relation to details, when the main point is one exclusively of discretion, is obviously decided beyond the probability of change, and that decision is communicated in the most friendly terms.

By the expiration in April, 1834, of the ten years limited in the fourth article of the convention, and by the definitive refusal to renew it, the Imperial Government would seem to attain an important object in their northwestern colonial policy, while the United States forego, in fact, nothing but a series of vague claims calculated only to embroil and complicate the relations of the two countries. My predecessor, Mr. Middleton, by whom the convention was negotiated, conceived the article to be a mutual grant, temporary in its duration, extending to specific and particular privileges, which the traders of neither nation would enjoy as general rights. He regarded the liberty to carry on commerce, without any hindrance whatever, with the natives in the interior seas, gulfs, harbors, and creeks of the Russian settlements, as so much added to the range of our trade beyond its natural boundaries; and he anticipated that, before the lapse of the term proposed, the Russian settlers would perceive the importance of our unshackled intercourse, as a sure and economical means for obtaining supplies, and would ultimately prolong it indefinitely. With these views and impressions, during the pendency of the negotiation, he originated the fourth article, which formed no part either of the *projet* of a treaty sent to him by Mr.

Adams, then Secretary of State, or of the *projet* he submitted to Count Nesselrode at their first conference on the 9th of February, 1821.

The adoption of the article suspended for ten years the necessity of practically discriminating between such places on the northwest coast as were open to a common trade, in consequence of being savage and unoccupied, and those accessible only by permission from a local authority. In other words, there was no immediate call for agreeing and defining what should constitute an "establishment," an "occupancy," or a "settlement," so as to redeem a given spot, with its contiguous territory from a wild state and subject them to an exclusive jurisdiction. During the prescribed period in this particular everything was left as large as before, and here lies, in my opinion, the chief if not the only important incident of the refusal to renew the article. It will become necessary now to have some distinct understanding as to the nature and range of the act of colonizing, which shall permanently vest the dominion in either nation. Without this our commerce in that interesting quarter must be impeded and narrowed and probably soon entirely destroyed by the absurd pretensions of the Russian Fur Company.

The stipulated freedom to trade unmolested within the interior seas, bays, creeks, and harbors of the northwest coast, being regarded, under our construction of the treaty, as solely applicable to occupied places, and having ceased upon the expiration of the ten years, it becomes essential to the safe prosecution of American enterprise and traffic in these remote regions, that we should ascertain, if possible, which of the interior seas, bays, creeks, and harbors fall, by actual Russian settlement, under exclusive Russian dominion. Although the facts be extremely difficult to reach, and a powerful monopoly be interested and at work to misrepresent them, still something may be effected by furnishing to our citizens a rule by which to test the character and extent of any occupation whose existence is alleged as an impediment to an intended voyage. And if we can not spare one or two of our vessels of war to make a thorough examination of the coast, as well as to assert, in defiance of petty obstacles, the national right to trade freely upon unoccupied points, we must be content, however reluctantly, to take just such statements for information as it may please the Fur Company's officers and agents to give. Supposing, then, what I do not expect, that the Imperial Government will abandon the ground it has taken in the case of Captain Blinn, and admit that we still possess the liberty of holding commerce with the natives north of the line of delimitation, I shall be anxious to have your instructions as to the suggested expediency of calling frankly for an enumeration of the points on the coast at which Russian settlements are alleged to exist, and of inviting the adjustment of some definite rule by which the reality of a settlement, and the extent of its adjacent operation, may at any time be peaceably determined. If, however, the position taken in reference to Captain Blinn's claim be adhered to, these inferior inquiries can not be made; for that position, as will be remembered, excludes our commerce, except by Russian permission, from the whole coast beyond the degree 51° 40′ north.

I should perhaps feel warranted in pursuing measures for this purpose without delay. The request for information as to the regulations to be enforced in relation to American vessels, made in my last note to Count Nesselrode, may be esteemed a fair preliminary. But I am anxious to know, before proceeding further, whether the decided manner in which I have treated the claim to exclusive dominion, in the affair of the *Loriot*, be approved or not; and whether the right by the laws of nations

to trade with the natives on unoccupied parts of the coast be esteemed so certain and so important that it will be insisted on, even at the hazard of interrupting the amicable relations of the two countries. I wish to shape my progress so as to harmonize in every movement, as nearly as possible, with whichever alternative, inflexibility, or concession the President may esteem the highest and truest policy.

* * * * * * * *

I have, etc.,

G. M. DALLAS.

[Inclosure in Mr. Dallas's No. 16.—Translation.]

Count Nesselrode to Mr. Dallas.

ST. PETERSBURG, *March* 9, 1838.

The undersigned has had the honor to receive the note that Mr. Dallas, envoy extraordinary and minister plenipotentiary of the United States of America, was pleased to address him on the 16th (28th) of December, relative to the proposition previously brought forward by Mr. Wilkins, to renew the fourth article of the convention of April 5 (17), 1824, of which the effect had been limited to a term of ten years, and which had, consequently, expired in 1834.

The desire not to decide a question of this importance without a thorough knowledge of the subject, did not permit the Imperial Government to give an opinion in relation to it until detailed information has been collected, as well in regard to the wants of the Russian establishments in America as to the influence that the state of things secured by the fourth article had exercised there. In setting forth this consideration to Mr. Wilkins, the undersigned intimated, in his note of the 28th of November, 1835, that he would give timely notice to the legation of the United States of the determinations adopted on this subject by the Russian Government.

The information then expected has since reached the undersigned, and it appears that the execution of the temporary provisions contained in the fourth article had not been unattended with serious inconveniences, and that it has been really injurious to the prosperity of the Russian establishments on the northwest coast. The greater part of the foreign vessels which resort to this coast, in virtue of the said stipulations, have only made use of the right of trading with the natives in order to sell them spirituous liquors, fire arms, and gunpowder. According to the tenor of the fifth article, these articles were expressly excluded from the trade; but experience has proven that this exclusion, and also the legislative measures by which the Government of the United States sought to carry it into effect, were illusory; since, by the same article, the contracting parties had deprived themselves of all means of controlling the vessels which should visit these latitudes, so that entire cargoes of rum, of fire-arms, and ammunition have been carried without hindrance into the Russian possessions and sold to the natives, thus necessarily endangering the germs of order and civilization which the agents of the Russian-American Company have already succeeded in introducing among these tribes.

It is, moreover, to be observed that the articles comprised in this fraudulent trade were expressly those of which the sale there offered most advantages, because the Russian American Company having once for all excluded them from its own traffic with the natives, the latter could only procure them on board foreign vessels.

This state of things could not fail to occasion complaints and remonstrances, which, the Imperial Government being ever anxious for the preservation of its relations with the United States, would alone, from that time, be an adequate motive to induce it to desire that the stipulations of the fourth article should not be renewed. But another consideration, not less decisive, here presents itself: this is the obligation under which the Imperial Government is placed to protect the commerce and navigation of the Russian colonies, and to secure to them henceforth the peaceable enjoyment of the advantages which, by virtue of their privileges, they are destined to gather from the improvement (exploitation) of the fisheries as well as from the trade with the natives.

These considerations, taken together, render it impossible for the Imperial Government to accede to the proposition which has been made to it to renew the stipulations of the fourth article. The regret experienced by it on the occasion is, however, diminished by the conviction that the United States would not themselves derive any especial advantage from the longer continuance of these stipulations, since, according to a statement of the navigation in these places, even whilst the fourth article was yet in force, there were never more than four American vessels arrived in the course

of a whole year, and that even this number, hardly to be taken into account in the flourishing state of the mercantile marine of the Union, was diminishing in proportion as enterprises on the northwest coast offered fewer chances of success. It appears evident from this that the renewal of the fourth article could hardly contribute to extend, in a reciprocally useful manner, the commercial relations between Russia and the United States of America; or, by consequence, answer the constant solicitude of the Imperial Government to cement more and more, and in a mutual interest, the friendly connections which it is always happy to cultivate with the Government of the Union.

The undersigned has the honor, etc.,

NESSELRODE.

No. 190.

Mr. Dallas to Mr. Forsyth.

No. 17.] LEGATION OF THE UNITED STATES,
St. Petersburg, May 13, 1838.

SIR: On the 9th instant, the communication of which I annex a copy was received from Count Nesselrode, in reply to my request, under date of the 26th of March last, to be furnished with information as to the measures adopted, or proposed to be adopted, by this Government, respecting the admission of American vessels into the Russian establishments on the northwest coast.

It will be perceived that the substance of Count Nesselrode's note is distinct and definitive, and that the single and simple measure adopted in relation to our vessels, is their absolute exclusion from what are deemed the Russian possessions. The published order of Governor Wrangel, to which Baron Krudener, in 1835, called your attention, is confirmed unqualifiedly in principle and practice; and the Cabinet at Washington is invited to repeat the warning heretofore given by it to the citizens of the United States not to contravene that prohibitory notice, so that they may avoid exposing themselves to the consequences of misunderstanding or collision.

Although my request for information was expressly limited to Russian establishments, and Count Nesselrode's reply to it may not strictly be extended beyond that limit, I can not help thinking that the prefatory and peculiar reference he has made to the expiration of the fourth article of the convention is meant as a reiteration of the position assumed in the case of the *Loriot*, Captain Blinn, to wit, that since April, 1834, our right to frequent the interior seas, gulfs, harbors, and creeks, north of 54° 40′ north latitude, whether actually occupied or not, has ceased. The consistent brevity, indeed, with which the effect of the ten years' limitation is uniformly invoked, satisfies me that it is esteemed a "*point d'appui*," in relation to our rights and pretensions on the northwest coast, too conclusive to be omitted or argued. My letter, in answer to the first assumption of that position, dated the 17th of March, 1838, and forwarded to you with dispatch No. 15, has not been noticed.

* * * * * * * *

Very respectfully, etc.

G. M. DALLAS.

[Inclosure in Mr. Dallas's No. 17.—Translation.]

Count Nesselrode to Mr. Dallas.

ST. PETERSBURG, *April* 27, 1838.

Mr. Dallas, envoy extraordinary and minister plenipotentiary of the United States of America, has been pleased in his note of the 14th (26th) of March, to express a

desire to know what measures have been adopted in consequence of the expiration of the fourth article of the convention of 1824, respecting the admission of American vessels into the harbors, bays, and rivers of the Russian establishments on the northwest coast. This request is made on account of the intention on the part of the Cabinet at Washington to adopt similar regulations, and such as may tend to prevent any injury to the relations now so fortunately existing between the two countries.

The undersigned, hastening to reply to an overture, accompanied by an assurance so satisfactory for the Imperial Government, makes it his duty to observe to Mr. Dallas, that, as the fourth article of the convention of the 5th (17th) of April, 1821, has only granted for ten years to the vessels of the two powers, or those belonging to their citizens or subjects, respectively, the right of frequenting, reciprocally, the interior seas, gulfs, harbors, and creeks on the coast mentioned in the third article of the same convention, for the purpose of fishing and trading with the natives of the country; and as this term of ten years expired in the month of April, 1831, the authorities of the Russian establishments on the said coast are required to see that American vessels no longer frequent the interior seas, gulfs, harbors, and creeks, situated north of the latitude of 54° 40′ north, as Russian vessels are, in like manner, forbidden to visit places of the same sort south of that parallel; and to maintain this prohibition, it is the duty of the said authorities to adopt the necessary measures, with the view of keeping up relations of harmony between the two Governments.

The governor of the Russian colonies on the northwest coast, having made upon this subject a publication which has been submitted to the knowledge of the Government of the United States, and the Emperor's minister at Washington having immediately afterwards invited that Government to make known to the citizens of the United States the new order of things consequent upon the expiration of the fourth article, the undersigned flatters himself with the belief that the Cabinet at Washington, in executing its announced resolution to adopt on its part similar measures, will think proper likewise to repeat its warning to the citizens of the United States, not to contravene the prohibition in question, and thus to avoid exposing themselves to the consequences of a misunderstanding or collision, which the Imperial Government would be the first to deplore.

On its part, the Imperial Government will not cease to recommend to its authorities on the northwest coast the necessary precautions, so that, while maintaining the rights acquired by Russia at the expiration of the fourth article, they should not lose sight of the respect due to the bonds of amity which unite the two Governments, and which the Imperial cabinet will always desire to strengthen and render more close for the mutual interests of their respective citizens and subjects.

The undersigned seizes, etc.,—

NESSELRODE.

No. 191.

Treaty concerning the cession of the Russian Possessions in North America by His Majesty the Emperor of all the Russias to the United States of America.

[Concluded March 30, 1867. Ratified by the United States May 28, 1867. Exchanged June 20, 1867. Proclaimed by the United States June 20, 1867.]

The United States of America and His Majesty the Emperor of all the Russias, being desirous of strengthening, if possible, the good understanding which exists between them, have, for that purpose, appointed as their plenipotentiaries: the President of the United States, William H. Seward, Secretary of State; and His Majesty the Emperor of all the Russias, the Privy Counsellor, Edward de Stoeckl, his Envoy Extraordinary and Minister Plenipotentiary to the United States.

And the said plenipotentiaries having exchanged their full powers, which were found to be in due form, have agreed upon and signed the following articles:

ARTICLE I.

His Majesty the Emperor of all the Russias agrees to cede to the United States, by this convention, immediately upon the exchange of

47 It will of course strike the Russian Plenipotentiaries that, by the adoption of the American Article respecting navigation, &c., the provision for an exclusive fishery of 2 leagues from the coasts of our respective possessions falls to the ground.

But the omission is, in truth, immaterial.

The law of nations assigns the exclusive sovereignty of 1 league to each Power on its own coasts, without any specific stipulation, and though Sir Charles Bagot was authorized to sign the Convention with the specific stipulation of 2 leagues, in ignorance of what had been decided in the American Convention at the time, yet, after that Convention has been some months before the world, and after the opportunity of consideration has been forced upon us by the act of Russia herself, we cannot now consent, in negotiating *de novo*, to a stipulation which, while it is absolutely unimportant to any practical good, would appear to establish a contrast between the United States and us to our disadvantage.

THE TREATY (GREAT BRITAIN AND RUSSIA), FEBRUARY 28, 1825.

These negotiations resulted in a Convention with Great Britain, signed on the 28th of February, 1825, hereinafter referred to.

PROTEST OF UNITED STATES.

50th Cong., 2nd Sess., Sen. Ex. Doc. No. 106, p. 201.

On the 30th January (11th February), 1822, M. Pierre de Poletica, the Envoy Extraordinary and Minister Plenipotentiary of the Russian Emperor, transmitted the Ukase to Mr. Adams, Secretary of State for the United States.

Ibid., p. 205.

On the 25th February, 1822, Mr. Adams wrote to M. Poletica:

DEPARTMENT OF STATE,
Washington, February 25, 1822.

SIR, I have the honour of receiving your note of the 11th instant, inclosing a printed copy of the Regulations adopted by the Russian-American Company, and sanctioned by His Imperial Majesty, relating to the commerce of foreigners in the waters bordering on the establishments of that Company upon the north-west coast of America.

I am directed by the President of the United States to inform you that he has seen with surprise, in this Edict, the assertion of a territorial claim on the part of Russia, extending to the 51st degree of north latitude on this continent, and a Regulation interdicting to all commercial vessels other than Russian, upon the penalty of seizure and confiscation, the approach upon the high seas within 100 Italian miles of the shores to which that claim is made to apply. The relations of the United States with His Imperial Majesty have always been of the most friendly character; and it is the earnest desire of this Government to preserve them in that state. It was expected, before any Act
48 which should define the boundary between the territories of the United States and Russia on this continent, that the same would have been arranged by Treaty between the parties. To exclude the vessels of our citizens from the shore, beyond the ordinary distance to which the territorial jurisdiction extends, has excited still greater surprise.

This Ordinance affects so deeply the rights of the United States and of their citizens, that I am instructed to inquire whether you are authorized to give explanations of the grounds of right, upon principles generally recognized by the laws and usages of nations, which can warrant the claims and Regulations contained in it.

I avail, &c.

(Signed) JOHN QUINCY ADAMS.

It will be observed that both the Ukase and the protest apply to the waters from Behring Strait southward as far as the 51st degree of latitude on the coast of America.

RUSSIAN DEFENCE OF UKASE.

On the 28th of the same month the Russian Representative replied at length, defending the territorial claim on grounds of discovery, first occupation, and undisturbed possession, and explaining the motive which determined the Imperial Government in framing the Ukase.

He wrote:

M. de Poletica to Mr. J. Q. Adams, February 28, 1823. American State Papers, Foreign Relations, vol. iv, pp. 861-862. See Appendix, vol. ii, Part II No. 1.

I shall be more succinct, sir, in the exposition of the motives which determined the Imperial Government to prohibit foreign vessels from approaching the north-west coast of America belonging to Russia within the distance of at least 100 Italian miles. This measure, however severe it may at first appear, is, after all, but a measure of prevention. It is exclusively directed against the culpable enterprises of foreign adventurers, who, not content with exercising upon the coasts above mentioned an illicit trade very prejudicial to the rights reserved entirely to the Russian-American Company, take upon them besides to furnish arms and ammunition to the natives in the Russian possessions in America, exciting them likewise in every manner to resist and revolt against the authorities there established.

The American Government doubtless recollects that the irregular conduct of these adventurers, the majority of whom was composed of American citizens, has been the object of the most pressing remonstrances on the part of Russia to the Federal Government from the time that Diplomatic Missions were organized between the countries. These remonstrances, repeated at different times, remain constantly without effect, and the inconveniences to which they ought to bring a remedy continue to increase. . . .

UKASE BASED ON DOCTRINE OF MARE CLAUSUM.

I ought, in the last place, to request you to consider, sir, that the Russian possessions in the Pacific Ocean extend, on the north-west coast of America, from Behring Strait to the 51st degree of north latitude, and on the opposite side of Asia and the islands adjacent, from the same strait to the 45th degree. The extent of sea of which these possessions form the limits comprehends all the conditions which are ordinarily attached to *shut seas* ("mers fermées"), and the Russian Government might consequently judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners. But it preferred only asserting its essential rights, without taking any advantage of localities.

49

To this Mr. Adams replied (30th March, 1822). He said:

50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 207. See Appendix, vol. ii, Part II, No. 2.

This pretension is to be considered not only with reference to the question of territorial right, but also to that prohibition to the vessels of other nations, including those of the United States, to approach within 100 Italian miles of the coasts. From the period of the existence of the United States as an independent nation, their vessels have freely navigated those seas, and the right to navigate them is a part of that independence.

With regard to the suggestion that the Russian Government might have justified the exercise of sovereignty over the Pacific Ocean as a close sea, because it claims territory both on its American and Asiatic shores, it may suffice to say that the distance from shore to shore on this sea, in latitude 51° north, is not less than 90° of longitude, or 4,000 miles.

The Russian Representative replied to this note on the 2nd April following, and in the course of his letter he said:

M. de Poletica to Mr. J. Q. Adams, April 2, 1822. 50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 208.

In the same manner the great extent of the Pacific Ocean at the 51st degree of latitude can not invalidate the right which Russia may have of considering that part of the ocean as close. But as the Imperial Government has not thought fit to take advantage of that right, all further discussion on this subject would be idle.

As to the right claimed for the citizens of the United States of trading with the natives of the country on the north-west coast of America, without the limits of the jurisdiction belonging to Russia, the Imperial Government will not certainly think of limiting it, and still less of attacking it there. But I cannot dissemble, sir, that this same trade beyond the 51st degree will meet with difficulties and inconveniences, for which the American owners will only have to accuse their own imprudence after the publicity which has been given to the measures taken by the Imperial Government for maintaining the rights of the Russian-American Company in their absolute integrity.

I shall not finish this letter, without repeating to you, sir, the very positive assurance which I have already had the honour once of expressing to you that in every case where the American Government shall judge it necessary to make explanations to that of the Emperor,
50 the President of the United States may rest assured that these explanations will always be attended to by the Emperor, my august Sovereign, with the most friendly and consequently the most conciliatory, dispositions.

On the 22nd July, 1823, Mr. Adams wrote to Mr. Middleton, the United States Minister at St. Petersburg, as follows:

52th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 210. See Appendix, vol. ii, Part II, No. 3.

From the tenour of the Ukase, the pretentions of the Imperial Government extend to an exclusive territorial jurisdiction from the 45th degree of north latitude, on the Asiatic coast, to the latitude of 51 north on the western coast of the American Continent; and they assume the right of interdicting the navigation and the fishery of all other nations to the extent of 100 miles from the whole of that coast.

The United States can admit no part of these claims. Their right of navigation and of fishing is perfect, and has been in constant exercise from the earliest times, after the Peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions, which, so far as Russian rights are concerned, are confined to certain islands north of the 55th degree of latitude, and have no existence on the Continent of America.

The correspondence between M. Poletica and this Department contained no discussion of the principles or of the facts upon which he attempted the justification of the Imperial Ukase. This was purposely avoided on our part, under the expectation that the Imperial Government could not fail, upon a review of the measure, to revoke it altogether. It did, however, excite much public animadversion in this country, as the Ukase itself had already done in England. I inclose herewith the North American Review for October, 1822, No. 37, which contains an article (p. 370) written by a person fully master of the subject; and for the view of it taken in England I refer you to the 52nd number of the Quarterly Review, the article upon Lieutenant Kotzebue's voyages. From the article in the North American Review it will be seen that the rights of discovery, of occupancy, and of uncontested possession, alleged by M. Poletica, are all without foundation in fact.

. . . .

Mr. Middleton, writing to the Secretary of State of the United States, on the 1st December, 1823, inclosed a confidential memorial which thus dealt with the claim (which is properly regarded by him as an attempt to extend territorial jurisdiction upon the theory of a shut sea and having no other basis):

American State Papers, Foreign Relations, vol. v, p. 452. See Appendix, vol. ii, Part II, No. 5.

51 The extension of territorial rights to the distance of 100 miles from the coasts upon two opposite continents, and the prohibition of approaching to the same distance from these coasts, or from those of all the intervening islands, are innovations in the law of nations, and measures unexampled. It must thus be imagined that this prohibition, bearing the pains of confiscation, applies to a long line of coasts, with the intermediate islands, situated in vast seas, where the navigation is subject to innumerable and unknown difficulties, and where the chief employment, which is the whale fishery, cannot be compatible with a regulated and well-determined course.

The right cannot be denied of shutting a port, a sea, or even an entire country, against foreign commerce in some particular cases. But the exercise of such a right, unless in the case of a colonial system already established, or for some other special object, would be exposed to an unfavourable interpretation, as being contrary to the liberal spirit of modern times, wherein we look for the bonds of amity and of reciprocal commerce among all nations being more closely cemented.

Universal usage, which has obtained the force of law, has established for all the coasts an accessory limit of a moderate distance, which is sufficient for the security of the country and for the convenience of its inhabitants, but which lays no restraint upon the universal rights of nations, nor upon the freedom of commerce and of navigation. (Vattel, Book I, Chapter 23, section 289.)

At the fourth Conference (8th March, 1824) which preceded the signature of the Treaty of the 5th (17th) April, 1824, Mr. Middleton, the United States Representative, submitted to Count Nesselrode the following paper: American State Papers, Foreign Relations, vol. v. pp. 465–466.

(Translation.)

The dominion can not be acquired but by a real occupation and possession, and an intention ('animus') to establish it is by no means sufficient.

Now, it is clear, according to the facts established, that neither Russia nor any other European Power has the right of dominion upon the Continent of America between the 50th and 60th degrees of north latitude.

Still less has she the dominion of the adjacent maritime territory, or of the sea which washes these coasts, a dominion which is only accessory to the territorial dominion.

Therefore she has not the right of exclusion or of admission on these coasts, nor in these seas, which are free seas.

The right of navigating all the free seas belongs, by natural law, to every independent nation, and even constitutes an essential part of this independence.

The United States have exercised navigation in the seas, and commerce upon the coasts above mentioned, from the time of their independence; and they have a perfect right to this navigation and
52 to this commerce, and they can only be deprived of it by their own act or by a Convention.

CONVENTION BETWEEN THE UNITED STATES AND RUSSIA.

THE TREATY (RUSSIA AND THE UNITED STATES), APRIL 17, 1824.

The result of these negotiations between the United States and Russia was the Convention of the 17th April, 1824, which put an end to any further pretension on the part of Russia to restrict navigation or fishing in Behring Sea, so far as citizens of the United States were concerned. For French text, see Appendix, vol. ii, Part III, No. 1. Blue Book, "United States No. 1 (1891)," p. 57. Appendix, vol. iii.

The English version of the Convention is as follows:

ARTICLE I.

NAVIGATION OF PACIFIC TO BE FREE.

It is agreed that in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the High Contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following Articles:

ARTICLE II.

With a view of preventing the rights of navigation and of fishing, exercised upon the Great Ocean by the citizens and subjects of the

High Contracting Powers, from becoming the pretext for an illicit trade, it is agreed that the citizens of the United States shall not resort to any point where there is a Russian Establishment, without the permission of the Governor or Commander; and that, reciprocally, the subjects of Russia shall not resort, without permission, to any Establishment of the United States upon the north-west coast.

ARTICLE III.

It is, moreover, agreed that hereafter there shall not be formed by the citizens of the United States, or under the authority of the said States, any Establishment upon the north-west coast of America, nor in any of the islands adjacent, to the north of 54° 40′ of north latitude; and that, in the same manner there shall be none formed by Russian subjects, or under the authority of Russia, south of the same parallel.

ARTICLE IV.

It is, nevertheless, understood that, during a term of ten years, counting from the signature of the present Convention, the ships of both Powers, or which belong to their citizens or subjects respectively, may reciprocally frequent, without any hindrance whatever, the interior seas, gulfs, harbours, and creeks upon the coast mentioned in the preceding Article, for the purpose of fishing and trading with the natives of the country.

53 ARTICLE V.

All spirituous liquors, firearms, other arms, powder, and munitions of war of every kind are always excepted from this same commerce permitted by the preceding Article; and the two Powers engage reciprocally neither to sell, or suffer them to be sold to the natives, by their respective citizens and subjects, nor by any person who may be under their authority. It is likewise stipulated that this restriction shall never afford a pretext, nor be advanced, in any case, to authorize either search or detention of the vessels, seizure of the merchandize, or, in fine, any measures of constraint whatever towards the merchants or the crews who may carry on this commerce; the High Contracting Powers reciprocally reserving to themselves to determine upon the penalties to be incurred, and to inflict the punishments in case of the contravention of this Article, by their respective citizens or subjects.

ARTICLE VI.

When this Convention shall have been duly ratified by the President of the United States, with the advice and consent of the Senate on the one part, and on the other, by His Majesty the Emperor of all the Russias, the ratifications shall be exchanged at Washington in the space of ten months from the date below, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this Convention, and thereto affixed the seals of their arms.

Done at St. Petersburgh the 5th (17th) April in the year of Grace 1824.

[L. S.] HENRY MIDDLETON,
[L. S.] Le Comte C. DE NESSELRODE.
[L. S.] PIERRE DE POLETICA.

CONVENTION BETWEEN GREAT BRITAIN AND RUSSIA.

TREATY (GREAT BRITAIN AND RUSSIA), FEBRUARY 25, 1825

For French text see Appendix, vol. ii, Part III, No. 2.

The negotiations between Great Britain and Russia resulted in the Convention of the 28th of February, 1825. The following is the English translation of this convention:

NAVIGATION OF PACIFIC TO BE FREE.

ARTICLE I.

See Blue Book, "United States No. 1 (1891)," p. 58. Appendix, vol. iii.

It is agreed that the respective subjects of the High Contracting Parties shall not be troubled or molested in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following Articles.

ARTICLE II.

In order to prevent the right of navigating and fishing exercised upon the ocean by the subjects of the High Contracting Parties, from becoming the pretext for an illicit commerce, it is agreed that the subjects of His Britannic Majesty shall not land at any place where there may be a Russian establishment without the permission of the Governor or Commandant; and, on the other hand, that Russian subjects shall not land without permission at any British establishment on the north-west coast.

ARTICLE III.

The line of demarcation between the possessions of the High Contracting Parties upon the coast of the continent and the islands of America to the north-west, shall be drawn in the manner following:

Commencing from the southernmost part of the island called Prince of Wales Island, which point lies in the parallel of 54° 40′ north latitude, and between the 131st and the 133rd degree of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and, finally, from the said point of intersection, the said meridian-line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British possessions on the continent of America to the north-west.

ARTICLE IV.

With reference to the line of demarcation laid down in the preceding Article, it is understood;

1st. That the island called Prince of Wales Island shall belong wholly to Russia.

2nd. That wherever the summit of the mountains which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, shall prove to be at a distance of more than 10 marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of 10 marine leagues therefrom

ARTICLE V.

It is moreover agreed that no establishment shall be formed by either of the two parties within the limits assigned by the two preceding Articles to the possessions of the other; consequently British subjects shall not form any establishment either upon the coast or upon the border of the continent comprised within the limits of the Russian possessions, as designated in the two preceding Articles; and, in like manner, no establishment shall be formed by Russian subjects beyond the said limits.

ARTICLE VI.

It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, shall for ever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which, in their course towards the Pacific Ocean, may cross the line of demarcation upon the line of coast described in Article III of the present Convention.

ARTICLE VII.

It is also understood that, for the space of ten years from the signature of the present Convention, the vessels of the two Powers, or those belonging to their respective subjects, shall mutually be at liberty to frequent, without any hindrance whatever, all the inland seas, the gulfs, havens, and creeks on the coast mentioned in Article III, for the purposes of fishing and of trading with the natives.

ARTICLE VIII.

The port of Sitka, or Novo Archangelsk, shall be open to the commerce and vessels of British subjects for the space of ten years from the date of the exchange of the ratifications of the present Convention. In the event of an extension of this term of ten years being granted to any other Power, the like extension shall be granted also to Great Britain.

ARTICLE IX.

The above-mentioned liberty of commerce shall not apply to the trade in spirituous liquors, in fire arms, or other arms, gunpowder, or other warlike stores; the High Contracting Parties reciprocally engaging not to permit the above-mentioned articles to be sold or delivered, in any manner whatever, to the natives of the country.

ARTICLE X.

Every British or Russian vessel navigating the Pacific Ocean which may be compelled by storms or by accident to take shelter in the ports of the respective Parties, shall be at liberty to refit therein, to provide itself with all necessary stores, and to put to sea again, without paying any other than port and lighthouse dues, which shall be the same as those paid by national vessels. In case, however, the master of such vessel should be under the necessity of disposing of a part of his merchandise in order to defray his expenses, he shall conform himself to the Regulations and Tariffs of the place where he may have landed.

ARTICLE XI

56 In every case of complaint on account of an infraction of the Articles of the present Convention, the civil and military authorities of the High Contracting Parties, without previously acting or taking any forcible measure, shall make an exact and circumstantial report of the matter to their respective Courts, who engage to settle the same in a friendly manner and according to the principles of justice.

ARTICLE XII.

The present Convention shall be ratified, and the ratifications shall be exchanged at London within the space of six weeks, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same and have affixed thereto the seal of their arms.

Done at St. Petersburgh the 16th (28th) day of February, in the year of our Lord One thousand eight hundred and twenty-five.

[L. S.] STRATFORD CANNING.
[L. S.] The Count DE NESSELRODE.
[L. S.] PIERRE DE POLITICA.

Mr. Stratford Canning to Mr. G. Canning, in his despatch of the 1st March, 1825, inclosing the Convention as signed, says:

See Appendix, vol. ii, Part 1, No. 56.

With respect to Behring Straits, I am happy to have it in my power to assure you, on the joint authority of the Russian Plenipotentiaries, that the Emperor of Russia has no intention whatever of maintaining any exclusive claim to the navigation of those straits, or of the seas to the north of them.

Mr. S. Canning, in a further despatch to Mr. G. Canning, 3rd (15th) April, 1825, said:

Ibid., No. 57.

. . . With respect to the right of fishing, no explanation whatever took place between the Plenipotentiaries and myself in the course of our negotiations. As no objection was started by them to the

Article which I offered in obedience to your instructions, I thought it unadvisable to raise a discussion on the question; and the distance from the coast at which the right of fishing is to be exercised in common passed without specification, and consequently rests on the law of nations as generally received.

Conceiving, however, at a later period that you might possibly wish to declare the law of nations thereon, jointly with the Court of Russia, in some ostensible shape, I broached the matter anew to Count Nesselrode, and suggested that he should authorize Count Lieven, on your invitation, to exchange notes with you declaratory of the law as fixing the distance at 1 marine league from the shore.

57 Count Nesselrode replied that he should feel embarrassed in submitting this suggestion to the Emperor just at the moment when the ratifications of the Convention were on the point of being dispatched to London; and he seemed exceedingly desirous that nothing should happen to retard the accomplishment of that essential formality. He assured me at the same time that his Government would be content, in executing the Convention, to abide by the recognized law of nations; and that, if any question should hereafter be raised upon the subject, he should not refuse to join in making the suggested declaration, on being satisfied that the general rule under the law of nations was such as we supposed.

Having no authority to press the point in question, I took the assurance thus given by Count Nesselrode as sufficient, in all probability, to answer every national purpose. . . .

The claim of Russia attracted much attention at the time.

UNITED STATES INTERPRETATION OF RUSSO-AMERICAN TREATY.

President Monroe wrote to Mr. Madison on the 2nd August, 1824, with reference to the Convention of that year, to the effect that—

By this Convention the claim to the *mare clausum* is given up, a very high northern latitude is established for our boundary with Russia, and our trade with the Indians placed for ten years on a perfectly free footing, and after that term left open for negotiation. . . . England will, of course, have a similar stipulation in favour of the free navigation of the Pacific, but we shall have the credit of having taken the lead in the affair.

Wharton, Digest of International Law, section 159, vol. ii, p. 226.

In answer to the above, Mr. Madison wrote to President Monroe on the 5th August, 1824:

The Convention with Russia is a propitious event, as substituting amicable adjustment for the risk of hostile collision. But I give the Emperor, however, little credit for his assent to the principle of "*mare Liberatum*" [*sic*] in the North Pacific. His pretensions were so absurd, and so disgusting to the maritime world, that he could not do better than retreat from them through the forms of negotiation. It is well that the cautious, if not courteous, policy of England towards Russia has had the effect of making us, in the public eye, the leading Power in arresting her expansive ambition.

Letters and Writings of James Madison, Philadelphia, 1865, p. 446.

THE UKASE NEVER ENFORCED.

In the year 1822 the Russian authorities attempted to enforce the provisions of the Ukase of 1821 and seized the United States brig "Pearl," when on a voyage from Boston to Sitka. The circumstances of this case are stated in the next Chapter.

See letter of S. Canning to G. Canning, April 23, 1823. Appendix, vol. ii, Part 1, No. 24.

See *post*, p. 78.

58 It is sufficient for the present purpose to note that the United States at once protested, the "Pearl" was released, and compensation paid for her arrest and detention.

This is believed to be the only case in which any attempt was, in practice, made by Russia to interfere with any ship

of another nation in the waters in question outside of territorial limits.

The facts disclosed in this Chapter show—

That the Ukase of the Emperor Paul in the year 1821—the first and only attempt on the part of Russia to assert dominion over, and restrict the rights of other nations in, the non-territorial waters of the North Pacific, including those of Behring Sea—was made the subject of immediate and emphatic protest by Great Britain and the United States of America,

That Russia thereupon unequivocally withdrew her claims to such exclusive dominion and right of control.

That the Conventions of 1824 and 1825 declared and recognized the rights of the subjects of Great Britain and the United States to navigate and fish in all parts of the non-territorial waters over which the Ukase purported to extend.

CHAPTER III.

59 HEAD C.—*The question whether the body of water now known as the Behring Sea is included in the phrase "Pacific Ocean," as used in the Treaty of 1825 between Great Britain and Russia.*

It will be remembered that the Ukase of 1821 included the Pacific from the Behring Strait southward to the 51st parallel, and that this claim was protested against *in toto*, on the ground that the coast was almost entirely unoccupied, and that maritime jurisdiction, even where the coast was occupied, could not extend beyond 3 miles.

In the first Articles of the Conventions of 1824 and 1825 the claim to an extraordinary jurisdiction at sea was definitely abandoned, and the abandonment was a complete withdrawal of the claim made. It was principally against this very claim that the protest of Great Britan and the United States were directed, and its relinquishment was therefore, and purposely, placed at the head of each of the resulting Conventions.

Article I of the Convention between Russia and the United States is as follows:

It is agreed that in any part of the Great Ocean, commonly called the Pacific Ocean, or South Sea, the respective citizens or subjects of the High Contracting Powers shall be neither disturbed nor restrained, either in navigation or in fishing, or in the power of resorting to the coasts, upon points which may not already have been occupied, for the purpose of trading with the natives, saving always the restrictions and conditions determined by the following Articles.

Article I of the Convention between Great Britain and Russia is as follows:

It is agreed that the respective subjects of the High Contracting Parties shall not be troubled or molested in any part of the ocean, commonly called the Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied, in order to trade with the natives, under the restrictions and conditions specified in the following Articles.

It has been contended, however, on the part of the United States, that the renunciation of claims contained in the Articles above quoted did not extend to what is now known as Behring Sea.

On this point Mr. Blaine, Secretary of State for the United States, writes:

Mr. Blaine to Sir J. Pauncefote, Blue Book, United States No. 1, 1891, p. 37. See Appendix, vol. iii.

60 The United States contends that the Behring Sea was not mentioned, or even referred to, in either Treaty, and was in no sense included in the phrase "Pacific Ocean." If Great Britain can maintain her position that the Behring Sea at the time of the Treaties with Russia of 1824 and 1825 was included in the Pacific Ocean, the Government of the United States has no well-grounded complaint against her.

NORTH-WEST COAST.

In order to uphold the contention thus advanced by the United States, it is, however, further found necessary to maintain that the words "north-west coast" and "north-west coast of America," which frequently occur in the correspondence connected with those Conventions, refer only to a portion of the coast of the continent south of Behring Sea. This portion of the coast Mr. Blaine endeavours to define precisely in his letter, which has just been quoted, illustrating his meaning by maps, and seeking to restrict the application of the term to that part of the coast which runs southward continuously from the 60th parallel. Ibid., p. 38.

The meaning of the phrase "Pacific Ocean" and that of the term "north-west coast" are thus intimately associated in the contention of the United States, and it will be convenient to treat them together.

MEANING OF THE PHRASE "PACIFIC OCEAN" AND THE TERM "NORTH-WEST COAST" IN THE TREATIES AND CORRESPONDENCE.

It will be found that such a construction of these phrases as Mr. Blaine has striven to place upon them cannot be reconciled with the correspondence. M. de Poletica to Mr. Adams, February 28, 1822. See Appendix, vol. ii, Part II, No. 1.

In the first place, it has already been shown that Russia's object was not the acquisition of the control of the sea between Behring Strait and latitude 51°—this she distinctly denied—but the exclusion from her coasts in Asia and America, and on the islands, of the traders whose ventures threatened the success of the Russian-American Company.

No claim had been advanced by Russia which could possibly render a distinction between Behring Sea and the main Pacific of the slightest importance.

On the contrary, in the Ukase of 1799, Russia asserted jurisdiction over her subjects on all hunting grounds and establishments on the coast of America from the 55° north latitude to Behring Strait and thence southward to

61 Japan, and on the Aleutian, Kurile, and other Islands in all the "north-eastern" ocean.

In 1821, Russia was endeavouring to assert a title to the whole coast from Behring Strait to 51° north latitude on the American, and latitude 45° 50′ on the Asiatic coast.

Her claim to an extraordinary maritime jurisdiction over the non-territorial waters of the ocean was definitively abandoned at the outset of the negotiations, and the discussion was thenceforward confined to the protection of her rights within territorial limits.

Russia's object was the recognition and protection of the Russian Settlements in America. Accordingly, the Conventions provide against "illicit commerce," landing "at any place [from Behring Strait to the southernmost boundary] where there may be a Russian establishment without the permission of the Governor or Commandant," and against the formation of Establishments by either Power (in the respective Conventions) on territory claimed by, or conceded to, the other.

USAGE OF THE TERMS IN OFFICIAL CORRESPONDENCE.

See Appendix, vol. i, No. 1. With the same object rules were made by Russia, headed "Rules established for the Limits of Navigation and Order of Communication along the coast of the Eastern Siberia, the *north-west-coast of America*, and the Aleutian, Kurile, and other Islands." This obviously included the American coast of Behring Sea in the term "north-west coast."

Ibid., vol. ii, Part I, No. 1. Baron Nicolay, writing to Lord Londonderry, 31st October (12th November), 1821, says:

(Translation.)

"NORTH-WEST COAST."

The new Regulation does not forbid foreign vessels to navigate the seas which wash the Russian possessions on the *north-west coast of America* and the north-east coast of Asia.

* * * * *

On the other hand, in considering the Russian possessions which extend on the *north-west coast of America*, from Behring Strait to 51° of north latitude, and also on the opposite coast of Asia and the adjacent islands, from the same Strait to 45°, &c.

* * * * *

"PACIFIC OCEAN."

For, if it is demonstrated that the Imperial Government would, strictly speaking, have had the power to entirely close to foreigners that part of the *Pacific Ocean* on which our possessions in America and Asia border, there is all the more reason why the right, in virtue of which it has just adopted a measure much less generally restrictive, should not be called in question.

* * * * *

62 The officers commanding the Russian vessels of war, which are to see to the maintenance of the above-mentioned arrangements in the *Pacific Ocean*, have been ordered to put them into force against those foreign vessels, &c.

In this note "north-west coast of America" is mentioned three times, and in each case the coast of Behring Sea is included in the term. "Pacific Ocean" appears twice, and in both instances includes the Behring Sea.

A map, published officially by Russian authorities, of which a copy is included among the documents annexed to this Case, was forwarded from St. Petersburg by Sir Charles Bagot to Lord Londonderry, in a despatch dated the 17th November, 1821, in which it is thus described:

For map, see Appendix, vol. iv, No. 1. See Appendix, vol. ii, Part I No. 4.

I have the honour to transmit to your Lordship, under a separate cover, an English translation of the Ukase, and I at the same time inclose a map of the north-west coasts of America, and the Aleutian and Kurile Islands, which has been published in the Quartermaster-General's Department here, and upon which I have marked all the principal Russian Settlements.

"NORTH-WEST COAST."

It will be seen on reference to this map that the words "part of the north-west coast of America" include the whole coast line from a point north of Behring Straits down to latitude 54° north.

Again Lord Londonderry writes to Count Lieven:

Lord Londonderry to Count Lieven, January 18, 1822. See Appendix, vol. ii, Part I, No. 7.

The Undersigned has the honour hereby to acknowledge the note, addressed to him by Baron de Nicolay of the 12th November last, covering a copy of an Ukase issued by His Imperial Majesty the Emperor of All the Russias, and bearing date the 4th September, 1821, for various purposes, therein set forth, especially connected with the territorial rights of his Crown on the *north-western coast of America, bordering upon the Pacific*, and the commerce and navigation of His Imperial Majesty's subjects in the seas adjacent thereto.

And Mr. S. Canning writing in February 1822 to Lord Londonderry from Washington, where he was then British Minister, observes:

Mr. Stratford Canning to the Marquis of Londonderry, February 19, 1822. See Appendix, vol. ii, Part I, No. 9.

I was informed this morning by Mr. Adams that the Russian Envoy has, within the last few days, communicated officially to the American Government an Ukase of the Emperor of Russia, which has lately appeared in the public prints, appropriating to the sovereignty and exclusive use of His Imperial Majesty the *north-west coast of America* down to the 51st parallel of latitude, together with a considerable portion of the opposite coasts of Asia, and the neighbouring seas to the extent of 100 Italian miles from any part of the coasts and intervening islands so appropriated. In apprising me of this circumstance, Mr. Adams gave me to understand that it was not the intention
63 of the American Cabinet to admit the claim thus notified on the part of Russia. His objection appears to lie more particularly against the exclusion of foreign vessels to so great a distance from the shore.

Again M. de Poletica, writing to Mr. Adams on the 28th February, 1822:

See Appendix, vol. ii, Part II, No. 1.

The first discoveries of the Russians on the north-west continent of America go back to the time of the Emperor Peter I. They belong to the attempt, made towards the end of the reign of this great Monarch, to find a passage from *the icy sea* into the *Pacific Ocean*.

* * * * *

When, in 1799, the Emperor Paul I granted to the present American Company its first Charter, he gave it the exclusive possession of the *north-west coast of America*, which belonged to Russia, from the 55th degree of north latitude to Behring Straits.

* * * * *

From this faithful exposition of known facts, it is easy, sir, as appears to me, to draw the conclusion that the rights of Russia, to the extent of the *north-west coast*, specified in the Regulation of the Russian-American Company, rest, &c.

*

The Imperial Government, in assigning for limits to the *Russian possessions on the north-west coast of America, on the one side Behring Straits, and on the other the 51st degree* of north latitude, has, &c.

* * * * *

"PACIFIC OCEAN."

I ought, in the last place, to request you to consider, sir, that the *Russian possessions in the Pacific Ocean extend on the north-west coast of America from Behring Straits to the 51st degree of north latitude*, and on the opposite side of Asia and the islands adjacent from the same strait to the 45th degree.

Throughout this note the phrase "north-west coast" includes the coast of Behring Sea, and the last passage shows unmistakably that the Russians at that time regarded the Pacific Ocean as extending to Behring Strait.

The attention of the British Government was called to the Ukase by the Hudson's Bay Company in the following terms:

"NORTH-WEST COAST."

Hudson's Bay Company to the Marquis of Londonderry, March 27, 1822. See Appendix, vol. ii, Part I, No. 10.

It has fallen under the observation of the Governor and Committee of the Hudson's Bay Company that the Russian Government have made a claim to the *north-west coast of America from Behring Straits* to the 51st degree of north latitude; and in an Imperial Ukase have prohibited foreign vessels from approaching the coast within 100 miles, under penalty of confiscation.

Mr. Adams to Mr. Rush, July 22, 1823. American State Papers, Foreign Relations, vol. v, p. 446. See Appendix, vol. ii, Part II, No. 4. See Appendix, vol. i, Nos. 3 and 4.

Mr. Adams, in 1823, dealt with the Russian claim as one of exclusive territorial right on the north-west coast of America, extending, as he said, from the "northern extremity of the continent." Articles in the "North American Review" (Vol. xv, article 18), and "Quarterly
64 Review" (1821-'22, Vol. xxvi, p. 344), published at the time of the controversy, and already referred to as mentioned with approbation by Mr. Adams, in 1824-'25, use the words "north-west coast" with the same signification.

American State Papers, Foreign Relations, vol. v, p. 436.

See Appendix, vol. ii, Part II, No. 3.

Mr. Adams, in his despatch of the 22nd July, 1823, to Mr. Middleton, referred to the Ukase of the Emperor Paul as purporting to grant to the American Company the "exclusive possession of the *north-west coast of America*, which belonged to Russia, from the 55th degree of *north latitude to Behring Strait*."

The fact that the whole, and not merely a particular portion, of the territorial and maritime claim advanced by the Ukase was in question, and was settled by the Treaties of 1824 and 1825, also appears from the Memorial laid by Mr. Middleton, on the part of the United States, before the Russian Government on the 17th December, 1823:

American State Papers, vol. v, p. 452.

See Appendix, vol. ii, Part II, No. 5.

With all the respect which we owe to the declared intention and to the determination indicated by the Ukase, it is necessary to examine the two points of fact; (1) *If the country to the south and east of Behring Strait, as far as the 51st degree of north latitude, is found strictly unoccupied.* (2) If there has been, latterly, a real occupation of this vast territory? . . . The conclusion which must necessarily result from these facts does not appear to establish that the territory in question had been legitimately incorporated with the Russian Empire.

The extension of territorial rights to the distance of 100 miles from the coasts upon two opposite continents, and the prohibition of approaching to the same distance from these coasts, or from those of all the intervening islands, are innovations in the law of nations, and measures unexampled.

In the earlier part of the same paper. Mr. Middleton observes:

The Ukase even goes to the *shutting up of a strait* which has never been till now shut up, and which is at present the principal object of discoveries, interesting and useful to the sciences.

The very terms of the Ukase bear that this pretension has now been made for the first time.

"PACIFIC OCEAN."

The same appears from Mr. G. Canning's despatch to Sir C. Bagot of the 24th of July, 1824 (which has been already quoted in any other connection): See Appendix, vol. ii, Part I, No. 44.

Your Excellency will observe that there are but two points which have struck Count Lieven as susceptible of any question. The first, the assumption of the base of the mountains, instead of the summit as the line of boundary; the second, the extension of the right *of navigation of the Pacific to the sea beyond Behring Straits.*

* * * * *

65 As to the second point, it is perhaps, as Count Lieven remarks, new. But it is to be remarked, in return, that the circumstances under which this additional security is required will be new also.

By the territorial demarcation agreed to in this "Projet," Russia will become possessed, in acknowledged sovereignty of both sides, of Behring Straits.

The Power which could think of making the Pacific a *mare clausum* may not unnaturally be supposed capable of a disposition to apply the same character to a strait comprehended between two shores of which it becomes the undisputed owner; *but the shutting up of Behring Straits, or the power to shut them up hereafter, would be a thing not to be tolerated by England.*

Nor could we submit to be excluded, either positively or constructively, See ante, p. 32. *from a sea in which the skill and science of our seamen has been and is still employed in enterprises interesting not to this country alone, but to the whole civilized world.*

The protection* given by the Convention to the American coasts of each Power may (if it is thought necessary) be extended in terms to the coasts of the Russian Asiatic territory; but in some way or other, if not in the form now prescribed, the free navigation of *Behring Straits, and of the seas beyond them*, must be secured to us.

It would have been of little advantage to secure the right to navigate through Behring Strait unless the right to navigate the sea leading to it was secured, which would not have been the case if the Ukase had remained in full force over Behring Sea.

The frequent references to Behring Strait and the seas beyond it show that there was no doubt in the minds of the British statesmen of that day that, in obtaining an acknowledgment of freedom of navigation and fishing throughout the Pacific, they had also secured this right as far as Behring Strait.

As corroborative proof of the usual practice of the British naval authorities, in the nomenclature of these waters, reference may be made to the instructions given in 1825 by the Lords Commissioners of the Admiralty, which will be found in the "Narrative of a Voyage to the Pacific and Behring Strait," &c., under command of Captain F. W.

*(i. e.) By the extension of territorial jurisdiction to two leagues, as originally proposed in the course of the negotiations between Great Britain and Russia.

Beechey, R. N., in the years 1825-26-27-28, published by authority in London, 1831.

66 These instructions from the Lords Commissioners, which are full and detailed, make reference only to Behring Strait and the Pacific Ocean, and do not mention the Sea of Kamtchatka or Behring Sea.

COMMON MEANING OF "PACIFIC OCEAN" AND "NORTH-WEST COAST."

Greenhow's works.

The works of Mr. Robert Greenhow, Translator and Librarian to the United States Department of State (well known in connection with the discussion of the "Oregon question"), afford a detailed and conclusive means of ascertaining the views officially held by the United States Government on the meaning of *Pacific Ocean*, *Behring Sea*, *North-west coast*, and the extent to which the claims made by Russia in the Ukase of 1821 were abandoned by the Convention of 1824.

"Memoir Historical and Political of the north-west coast of North America and the adjacent territories, illustrated by a map and a geographical view of these countries, by Robert Greenhow, Translator and Librarian to the Department of State." Senate, 26th Cong., 1st Session (174), 1840. The same Memoir, separately printed, apparently in identical form, and with the same map, and pagination, Wiley and Putnam, New York, 1840.

A "Memoir" was prepared by Mr. Greenhow, on the official request of Mr. L. F. Linn, Chairman of a Select Committee on the Territory of Oregon, by order of Mr. John Forsyth, Secretary of State. It includes a map entitled "The North-west Coast of North America and adjacent Territories," which extends from below Acapulco in Mexico to above the mouth of the Kuskoquim in Behring Sea, and embraces also the greater part of the Aleutian chain.

"NORTH-WEST COAST."

Touching the signification of the terms *North-west coast* and *Pacific Ocean*, and the meaning attached to the relinquishment of Russian claims by the Convention of 1824, the first part of the "Memoir," under the heading "Geography of the Western Section of North America," contains the following passage:

The *north-west coast** is the expression usually employed in the United States at the present time to distinguish the vast portion of the American continent which extends north of the 40th parallel of latitude from the Pacific to the great dividing ridge of the *Rocky Mountains*, together with the contiguous islands in that ocean. The southern part of this territory, which is drained almost entirely by the River Columbia, is commonly called *Oregon*, from the supposition (no doubt erroneous) that such was the name applied to its principal stream by the aborigines. To the more northern parts of the continent many appellations, which will hereafter be mentioned, have been assigned by navigators and fur traders of various nations. The territory bordering upon the Pacific southward, from the 40th parallel

67 to the extremity of the peninsula which stretches in that direction as far as the Tropic of Cancer, is called *California*, a name of uncertain derivation, formerly applied by the Spaniards to the whole western section of North America, as that of *Florida* was

*N. B.—The *italics* in this and subsequent quotations are those employed by Greenhow himself.

employed by them to designate the regions bordering upon the Alantic. The north-west coast and the west coast of California, together form the *west coast of North America;* as it has been found impossible to separate the history of these two portions, so it will be necessary to include them both in this geographical view (p. 1).

Mr. Greenhow here gives the following note:

In the following pages the term *coast* will be used, sometimes as signifying only the sea-shore, and sometimes as embracing the whole territory, extending therefrom to the sources of the river; care has been, however, taken to prevent misapprehension, where the context does not sufficiently indicate the true sense. In order to avoid repetitions, the *north-west coast* will be understood to be the *north-west coast of North America;* all *latitudes* will be taken as *north latitudes*, and all *longitudes* as *west from Greenwich*, unless otherwise expressed.

The "Memoir" continues as follows:

"PACIFIC OCEAN."

The northern extremity of the west coast of America is *Cape Prince of Wales*, in latitude 65° 52′, which is also the westernmost spot in the whole continent; it is situated on the eastern side of *Beering's Strait*, a channel 51 miles in width, connecting the Pacific with the *Arctic* [or *Icy* or *North Frozen*] *Ocean*, on the western side of which strait, opposite Cape Prince of Wales, is *East Cape*, the eastern extremity of Asia. Beyond Beering Strait the shores of the two continents recede from each other. *The north coast of America* has been traced from Cape Prince of Wales north-eastward to *Cape Barrow*, &c., pp. 3, 4.

The relations of Behring Sea to the Pacific Ocean are defined as follows in the "Memoir":

The part of the Pacific north of the Aleutian Islands which bathes those shores is commonly distinguished as the *Sea of Kamtchatka*, and sometimes *Behring Sea*, in honour of the Russian navigator of that name who first explored it (pp. 4, 5).

Again, in the "Geography of Oregon and California," Mr. Greenhow writes:

"The Geography of Oregon and California and the other territories on the northwest coast of North America," New York, 1845.

Cape Prince of Wales, the westernmost point of America, is the eastern pillar of Behring Strait, a passage only 50 miles in width, separating that continent from Asia, and forming the only direct communication between the Pacific and Arctic Oceans.

. . . . . .

The part of the Pacific called the *Sea of Kamtchatka*, or Behring Sea, north of the Aleutian chain, likewise contains several islands, &c. (p. 4).

Greenhow's "History" was officially presented to the Government of Great Britain by the Government of the United States in July 1845, in connection with the Oregon discussion and in pursuance of an Act of Congress.*

In this History the Sea of Kamtchatka, or Behring's Sea, is again referred to as a part of the Pacific Ocean.

"The History of Oregon and California and the other territories on the north-west coast of North America, by Robert Greenhow, Translator and Librarian to the Department of State of the United States; author of a Memoir Historical and Political, on the north-west coast of North America, published in 1840 by direction of the Senate of the United States." New York, 1845.

* The following is the correspondence accompanying the presentation by the Government of the United States:

"Mr. Buchanan to Mr. Pakenham.

"DEPARTMENT OF STATE,
"Washington, July 12, 1845.

"SIR: In pursuance of an Act of Congress approved on the 20th of February, 1845, I have the honour to transmit to you herewith, for presentation to the Government of Great Britain, one copy of the 'History of Oregon, California, and the other territories on the North-west Coast

"Dictionnaire Géographique Universel," Tom. iv, Paris, 1823-33.

Mer Pacifique. Il s'étend du nord au sud depuis le Cercle Polaire Arctique, c'est-à-dire, depuis le Détroit de Behring, qui le fait communiquer à l'Océan Glacial Austral.

Seitz, Dr. J. C., "Geographisches Statistisches Handwörterbuch," Bd. iii, Pesth, 1822, Halberstadt, 1829.

Stilles Meer. Vom 30 südlicher Breite bis zum 5 nördlicher Breite verdient es durch seine Heiterkeit und Stille den namen des Stillen Meers; von da an bis zur Beringsstrasse ist es heftigen Stürmen unterworfen.

Arrowsmith, "Grammar of Modern Geography," London, 1832.

Bhering's Strait connects the Frozen Ocean with the Pacific.

The Anadir flows into the Pacific Ocean.

The principal gulfs of Asiatic Russia are: the Gulf of Anadir, near Bhering's Strait; the Sea of Penjina, and the Gulf of Okhotsk, between Kamtchatka and the mainland of Russia—all three in the Pacific Ocean.

"Précis de la Géographie Universelle," par Malte-Brun, Tom. ii, p. 181, Paris, 1831-37.

74 L'Océan Pacifique Boréal s'étend depuis le Détroit de Behring jusqu'au Tropique de Cancer.

Ibid., Tom. viii, p. 4.

Le Détroit de Behring. A commencer par ce détroit, le Grand Océan (ou Océan Pacifique) forme la limite orientale de l'Asie.

Langlois, "Dictionnaire de Geographie, Tom. i, Paris, 1838.

Behring (détroit célebre). Il joint l'Océan Glacial Arctique au Grand Océan.

"Penny Cyclopædia," vol. xvii, London, 1840.

The Pacific Ocean. Its boundary-line is pretty well determined by the adjacent continents, which approach one another towards the north, and at Behring's Strait which separates them, are only about 36 miles apart. This strait may be considered as closing the Pacific on the north.

"Dictionnaire Universel d'Histoire et de Géographie," par M. N. Bouillet, Paris, 1842.

Behring (Détroit de) À l'extrémité nord-est de l'Asie, sépare ce continent de l'Amérique et l'Ocean Glacial Arctique de l'Océan Pacifique.

Behring (Mer de), partie de l'Océan Pacifique.

"Dictionnaire Géographique et Statistique," par Adrien Guibert, Tom. i, Paris, 1850.

Behring (Détroit de). Canal de l'Océan . . . . unissant les eaux de l'Océan Pacifique à celles de l'Océan Arctique.

"The New American Cyclopædia," edited by George Ripley and Charles A. Dana, New York, 1851.

Pacific Ocean. Between longitude 70° west and 110° east, that is, for a space of over 180°, it covers the greater part of the earth's surface, from Behring's Straits to the Polar Circle, that separates it from the Antartic Ocean.

"Harper's Statistical Gazetteer of the World," vol. i, by J. Collins Smith, New York, 1855.

Behring Sea is that part of the North Pacific Ocean between the Aleutian Islands in latitude 55° north and Behring Strait in latitude 66° north, by which latter it communicates with the Arctic Ocean.

Imperial Gazetteer, vol. i, Glasgow, 1855.

Behring Sea, sometimes called the Sea of Kamtchatka, is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behring's Strait.

"Grand Dictionnaire de Géographie Universelle," par S. N. Boscheron, Tom. i, Paris, 1856-57.

Behring (Détroit de). Canal du Grand Ocean unissant les eaux de l'Océan Pacifique à celles de l'Océan Glacial Arctique.

McCulloch's "Geographical Dictionary," edited by F. Martin, vol. iii, London, 1866.

Pacific Ocean. Its extreme southern limit is the Antarctic Circle, from which it stretches northward through 132° of latitude to Behring's Strait, which separates it from the Arctic Ocean.

"Grand Dictionnaire Universel," par P. La Rousse, Tom. ii, Paris, 1866-76.

Behring (Détroit de). Canal ou bras de mer unissant les eaux de l'Océan Glacial Arctique à celles de l'Océan Pacifique.

St. Martin, "Nouveau Dictionnaire de Géographie Universelle," Tom. i, Paris, 1879.

Behring (Détroit de). Passage qui unit l'Océan Glacial Arctique au Grand Océan.

Behring Sea, or Sea of Kamchatka, is that part of the North Pacific Ocean between the Aleutian Islands in latitude 55° north and Behring Strait in latitude 66° north, by which latter it communicates with the Arctic Ocean.

Lippincott's "Gazetteer of the World," Philadelphia, 1880.

Beringsstrasse. Meerenge das nordöstlichste Eismeer mit dem Stillen Ocean verbindend.

Ritter's "Geographisch Statistisch Lexicon," Bd. i. Leipzig, 1883.

Behring's Strait, connecting the North Pacific with the Arctic Ocean.

Blackie's "Modern Cyclopædia," vol. i, London, 1889 edition.

Behring's Sea, sometimes called the Sea of Kamchatka, is that portion of the North Pacific Ocean lying between the Aleutian Islands and Behring's Strait.

75 VIEWS OF ENGLISH AND AMERICAN JURISTS.

Finally, a few passages may be quoted from English and American publicists of acknowledged eminence, to show the manner in which the general question has been viewed by them.

Dr. T. D. Woolsey, President of Yale College, "Introduction to the Study of International Law," 3rd edition, New York, 1872, p. 83:

Woolsey, "Introduction to International Law," 3rd edition, New York, 1872, p. 83.

Russia, finally, at a more recent date, based an exclusive claim to the Pacific, north of the 51st degree, upon the ground that this part of the ocean was a passage to shores lying exclusively within her jurisdiction. But this claim was resisted by our government, and withdrawn in the temporary convention of 1824. A treaty of the same empire with Great Britain in 1825 contains similar concessions.

In referring to the Russian Ukase of 1821, Wharton, "Digest of International Law of the United States," Washington, 1886, vol. i, section 32, p. 3, speaks of Russia—

Wharton, "Digest of International Law," Washington, 1886, vol. i, section 32, p. 3.

Having asserted in 1822 to 1824 an exclusive jurisdiction over the *north-west coast and waters of America from Behring Strait to the fifty-first degree of north latitude.*

Mr. Davis, Assistant Professor of Law at the United States Military Academy, "Outlines of International Law," New York, 1887, p. 44:

Davis, "Outlines of International Law," New York, 1887, p. 44.

Russia, in 1822, laid claim to exclusive jurisdiction over that part of the Pacific Ocean lying north of the 51st degree of north latitude, on the ground that it possessed the shores of that sea on both continents beyond that limit, and so had the right to restrict commerce to the coast inhabitants.

A recent United States writer, Professor J. B. Angell, discussing this subject, says:

Jas. B. Angell, in the "Forum," November, 1889; "American Rights in Behring Sea."

The Treaty of 1824 secured to us the right of navigation and fishing in any part of the great ocean, commonly called the Pacific Ocean, or South Sea, and (in Article IV) for ten years that of frequenting the interior seas, gulfs, harbours, and creeks upon the coast for the purpose of fishing and trading. At the expiration of ten years Russia refused to renew this last provision, and it never was formally renewed. But, for nearly fifty years at least, American vessels have been engaged in taking whales in Behring Sea without being disturbed by the Russian Government. Long before the cession of Alaska to us, hundreds of our whaling vessels annually visited the Arctic Ocean and Behring Sea, and brought home rich cargoes. It would seem, therefore, that Russia regarded Behring Sea as a part of the Pacific Ocean, and not as one of the "interior seas," access to which was forbidden by the termination of the IVth Article of the Treaty.

See Appendix, vol. i, No. 8.

76 Sir R. Phillimore, in the 2nd edition of "Commentaries upon International Law," vol. i, p. 241, remarks:

Phillimore, "International Law," 2nd edition, vol. i, p. 241. [3rd edition, p. 290].

In 1822 Russia laid claim to a sovereignty over the Pacific Ocean north of the 51st degree of latitude: but the Government of the United States of America resisted this claim as contrary to the principles of international law.

Alaska, p. 548. 79 In 1827, Lütke, sent by the Russian Government, arrived at Sitka, and thereafter made explorations in the Aleutian Islands and in Behring Sea.

North-west Coast, vol. i, p. 341. Two vessels only of the trading fleet on the north-west coast are in this year known by name.

Alaska, p. 546. In 1828, two vessels belonging to Lütke's expedition carried on surveys in Behring Sea. The trading vessel "Eliza" was at Sitka in this year.

Letter of Brewer to Amory, H. R., Ex. Doc., 40th Cong., 2nd Sess., No. 177, p. 85. In the years 1826, 1827, and 1828 the "Chinchella," a United States brig, Thomas Meek, master, was trading between Sitka and China.

Alaska, p. 565. In 1829, a Russian vessel was sent from Sitka to Chile to trade. Some explorations were also made by the Russians in the inland country.

Ibid., p. 547. In 1830, explorations were made in Behring Sea by Etholen. Wrangell relieved Chistiakof in command. The

North-west Coast, vol. i, p. 341. names of four or five foreign vessels trading on the north-west coast in this and the following year are recorded.

Alaska, pp. 548–552. In 1832 or 1833; Tebenkof established a post near the mouth of the Yukon, and explorations were conducted inland.

Ibid., p. 555. In 1833, the Hudson's Bay Company sent the British vessel "Dryad" to form an Establishment at the mouth of the Stikine, but Wrangell, having heard of the enterprise, occupied the place in advance, and turned the vessel back. Damages to the amount of £20,000 were claimed through

See post, p. 83. the British Government from Russia. This will be referred to later.

Ibid., p. 583. A United States whaling master, under a five years' Contract with the Russian Company, arrived at Sitka, but achieved little.

North-west Coast, vol. i, p. 341. In 1834, the name of but one of the foreign vessels trading on the north-west coast is recorded.

Ibid., pp. 341, 342. In 1836, the "Eliza" was again at Sitka, and three foreign trading vessels are recorded to have visited the Alaskan coast.

CASE OF THE "LORIOT."

In the same year the United States brig "Loriot" sailed from the Sandwich Islands for the north-west coast

80 of America for the purpose of procuring provisions, and also Indians to hunt for sea-otters on the coast. When in the Harbour of Tuckessan, latitude 54° 55′ north, and longitude 132° 30′ west, a Russian armed brig ordered the "Loriot" to leave. This action was based on the expiration of the period named in the IVth Article of the Treaty, whereby, for ten years only, liberty to touch and trade at Russian Establishments on the coast was granted.

50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 233. The United States protested against the interference with the "Loriot," characterizing it as an "outrage," and

See Appendix, vol. ii, Part II, No. 6. the following is an extract from instructions which were sent by the United States Secretary of State to Mr. Dallas, the Minister at St. Petersburg, under date 4th May, 1837:

On the other hand, should there prove to be no Russian Establishments at the places mentioned, this outrage on the "Loriot" assumes a still graver aspect. It is a violation of the right of the citizens of the United States, immemorially exercised, and secured to them as well

by the law of nations as by the stipulations of the 1st Article of the Convention of 1824, to fish in those seas, and to resort to the coast, for the prosecution of their lawful commerce upon points not already occupied. As such, it is the President's wish that you should remonstrate, in an earnest but respectful tone, against this groundless assumption of the Russian Fur Company, and claim from His Imperial Majesty's Government for the owners of the brig "Loriot," for their losses and for the damages they have sustained, such indemnification as may, on an investigation of the case, be found to be justly due to them.

Mr. Dallas subsequently wrote that he was led to believe that Russian Establishments had been made at the places mentioned. Nevertheless, the United States contended that at the expiration of the IVth Article, the law of nations practically gave United States ships the privileges therein mentioned.

50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 234. See Appendix, vol. ii, Part II, No. 7. Ibid., p. 236. See Appendix, vol. ii, Part II, No. 8.

Mr. Dallas (16th August, 1837) wrote to the Secretary of State:

Ibid., p. 234. See Appendix, vol. ii, Part II, No. 7.

The 1st Article asserts for both countries general and permanent rights of navigation, fishing, and trading with the natives, upon points not occupied by either, north or south of the agreed parallel of latitude.

Ibid., p. 236. See Appendix, vol. ii, Part II, No. 9.

Mr. Forsyth, Secretary of State for the United States, writing to Mr. Dallas on the 3rd November, 1837, and
81 referring to the 1st Article of the Convention of April, 1824, between the United States and Russia, said:

The 1st Article of that instrument is only declaratory of a right which the parties to it possessed under the law of nations without conventional stipulations, to wit, to navigate and fish in the ocean upon an unoccupied coast, and to resort to such coast for the purpose of trading with the natives.

. . . . .

The United States, in agreeing not to form new establishments to the north of latitude 54° 40′ N., made no acknowledgment of the right of Russia to the territory above that line.

And again:

It can not follow that the United States ever intended to abandon the just right acknowledged by the 1st Article to belong to them under the law of nations—to frequent any part of the unoccupied coast of North America for the purpose of fishing or trading with the natives. All that the Convention admits is an inference of the right of Russia to acquire possession by settlement north of 54° 40′ N. Until that actual possession is taken, the 1st Article of the Convention acknowledges the right of the United States to fish and trade as prior to its negotiation.

In his despatch of the 23rd February, 1838, Count Nesselrode, the Russian Foreign Minister, wrote to Mr. Dallas:

50th Cong., 2nd Sess., Senate Ex. Doc. No. 106, p. 238. See Appendix, vol. ii, Part II, No. 10.

It is true, indeed, the 1st Article of the Convention of 1824, to which the proprietors of the "Loriot" appeal, secures to the citizens of the United States entire liberty of navigation in the Pacific Ocean, as well as the right of landing without disturbance upon all points on the north-west coast of America, not already occupied, and to trade with the natives.

Again, Mr. Dallas, in a despatch to Count Nesselrode, dated the 5th (17th) March, 1838, interpreted Article I of the Convention as being applicable to *any part of the Pacific Ocean*. He wrote:

Ibid., p. 241. See Appendix, vol. ii, Part II, No. 11.

. . . The right of the citizens of the United States to navigate the Pacific Ocean, and their right to trade with the aboriginal natives of the north-west coast of America, without the jurisdiction of other

nations, are rights which constituted a part of their independence as soon as they declared it. They are rights founded in the law of nations, enjoyed in common with all other independent sovereignties,
82 and incapable of being abridged or extinguished, except with their own consent. It is unknown to the Undersigned that they have voluntarily conceded these rights, or either of them, at any time, through the agency of their Government, by Treaty or other form of obligation, in favour of any community.

. . . . .

There is first a mutual and permanent agreement declaratory of their respective rights, without disturbance or restraint, to navigate and fish in any part of the Pacific Ocean, and to resort to its coasts upon points which may not already have been occupied, in order to trade with the natives. These rights pre-existed in each, and were not fresh liberties resulting from the stipulation. To navigate, to fish, and to coast, as described, were rights of equal certainty, springing from the same source, and attached to the same quality of nationality. Their exercise, however, was subjected to certain restrictions and conditions, to the effect that the citizens and subjects of the contracting sovereignties should not resort to points where establishments existed without obtaining permission; that no future establishments should be formed by one party north, nor by the other party south, of 54° 40′ north latitude; but that, nevertheless, both might, for a term of ten years, without regard to whether an establishment existed or not, without obtaining permission, without any hindrance whatever, frequent the interior seas, gulfs, harbours, and creeks, to fish and trade with the natives. This short analysis leaves, on the question at issue, no room for construction.

. . . . .

The Undersigned submits that in no sense can the fourth Article be understood as implying an acknowledgment, on the part of the United States, of the right of Russia to the possession of the coast above the latitude of 54° 40′ north.

President Van Buren's Message, December 3, 1838. State Papers, by Hertslet, vol. xxvi, p. 1330.

In transmitting the papers relative to the "Loriot" to Congress, the President of the United States observed:

The correspondence herewith communicated, will show the grounds upon which we contend that the citizens of The United States have, independent of the provisions of the Convention of 1824, a right to trade with the natives upon the coast in question at unoccupied places, liable, however, it is admitted, to be at any time extinguished by the creation of Russian establishments at such points. This right is denied by the Russian Government, which asserts that, by the operation of the Treaty of 1824, each party agreed to waive the general right to land on the vacant coasts on the respective sides of the degree of latitude referred to, and accepted, in lieu thereof, the mutual privileges mentioned in Article IV. The capital and tonnage employed by our citizens in their trade with the north-west coast of America
83 will, perhaps, on adverting to the official statements of the commerce and navigation of the United States for the last few years, be deemed too inconsiderable in amount to attract much attention; yet the subject may, in other respects, deserve the careful consideration of Congress.

HISTORICAL OUTLINE CONTINUED.

To return again to the chronological order of events—

North-west Coast, vol. i, p. 342.

In 1837, one foreign trading vessel is named as having been on the north-west coast.

Alaska, pp. 552, 553.

In 1838, further explorations were undertaken in the north by Chernof and Malakhof. Three foreign trading vessels are noted as having been on the north-west coast in this year, and one is known to have visited Alaskan waters.

North-west Coast, vol. i, p. 342. Alaska, pp. 536, 537.

In 1839 a Commission met in London to arrange the dispute between the Hudson's Bay and Russian American

Companies, arising out of the interference by Russian officials with the British vessel "Dryad." The claim for damages by the former Company was waived, on condition that the latter should grant a lease of all their continental territory northward to Cape Spencer, Cross Sound (about latitude 58°), on a fixed rental. This arrangement was for ten years, but was renewed, and actually continued in force for twenty-eight years.

In 1840, the British flag was hoisted and saluted at the mouth of the Stikine, the Hudson's Bay Company taking possession. A post was also established by the Company at Taku Inlet. Ibid. p. 557.

At this time whalers were just beginning to resort to Behring Sea; from 1840 to 1842 a large part of the fleet was engaged in whaling on the "Kadiak grounds." Writing in 1842, Etholen says, that for some time he had been constantly receiving reports from various parts of the Colony of the appearance of American whalers in the neighbourhood of the shores. Ibid., p. 583, Tikhmenieff. See Appendix, vol. i, No. 5.

In the same year Etholen relieved Kuprianof as Governor at Sitka. Alaska, p. 559.

In 1841, the Charter of the Russian-American Company was renewed for a further term of twenty years. Etholen reported the presence of fifty foreign whalers in Behring Sea. Ibid., p. 568.

In 1842, according to Etholen, thirty foreign whalers were in Behring Sea. Ibid., p. 583.

He asks the Russian Government to send cruisers to preserve this sea as a *mare clausum*.

84 His efforts were, however, unsuccessful, the Minister for Foreign Affairs replying that the Treaty between Russia and the United States gave to American citizens the right to engage in fishing over the whole extent of the Pacific Ocean.

In the same year, inland explorations by Zagoskin, which continued till 1844, began. Sir George Simpson, Governor of the Hudson's Bay Company, reached the Stikine post just in time to prevent an Indian uprising. He also visited the Russian Establishment at Sitka and completed an arrangement between the Companies to interdict trade in spirits on the coast. Alaska, pp. 553, 554. Ibid., pp., 558–560.

About this time the Russian-American Company became alarmed at the danger to their fur trade. Every effort was, therefore, put forward by the Company and the Governors to induce the Foreign Office of the Russian Government to drive off these whalers from the coasts, and by excluding them for a great distance from shore, prevent trespasses on shore and the traffic in furs.

In 1843, explorations were carried out by the Russians on the Sustchina and Copper Rivers. Ibid., p. 576.

The whalers, from 1843 to 1850, landed on the Aleutian and Kuttle Islands, committing depredations. United States captains openly carried on a traffic in furs with the natives. Ibid., pp. 583, 584.

Tikhmenieff writes:

> From 1843 to 1850 there were constant complaints by the Company of the increasing boldness of the whalers. Tikhmenieff. See Appendix, vol. i, No. 5.

In 1846 the Governor-General of Eastern Siberia asked that foreign whalers should not be allowed to come within 40 Italian miles of the Russian shores.

Tikhmenieff thus describes the result of these representations:

> The exact words of the letter from the Foreign Office are as follows: "The fixing of a line at sea within which foreign vessels should be prohibited from whaling off our shores would not be in accordance with the spirit of the Convention of 1824, and would be contrary to the provisions of our Convention of 1825 with Great Britain. Moreover the adoption of such a measure, without preliminary negotiation and arrangement with the other Powers, might lead to protests, since no clear and uniform agreement has yet been arrived at among nations in regard to the limit of jurisdiction at sea."

85 In 1847 a representation from Governor Tebenkof in regard to new aggressions on the part of the whalers gave rise to further correspondence. Some time before, in June 1846, the Governor-General of Eastern Siberia had expressed his opinion that, in order to limit the whaling operations of foreigners, it would be fair to forbid them to come within 40 Italian miles of our shores, the ports of Petropaulovsk and Okhotsk to be excluded, and a payment of 100 silver roubles to be demanded at those ports from every vessel for the right of whaling. He recommended that a ship of war should be employed as a cruizer to watch foreign vessels. The Foreign Office expressly stated as follows, in reply:

> "We have no right to exclude foreign ships from that part of the Great Ocean which separates the eastern shore of Siberia from the north-western shore of America, or to make the payment of a sum of money a condition to allowing them to take whales."
>
> The Foreign Office were of opinion that the fixing of the line referred to above would reopen the discussions formerly carried on between England and France on the subject. The limit of a cannon shot, that is about 3 Italian miles, would alone give rise to no dispute. The Foreign Office observed, in conclusion, that no Power had yet succeeded in limiting the freedom of fishing in open seas, and that such pretensions had never been recognised by the other Powers. They were confident that the fitting out of colonial cruizers would put an end to all difficulties; there had not yet been time to test the efficacy of this measure.

Tikhmenieff. See Appendix, vol. i, No. 5. In 1847, traffic in fur-seal skins was carried on by a United States whaler at Behring Island.

In 1848, foreign whaling vessels entered the Arctic Ocean by way of Behring Straits for the first time.

Alaska, p. 584. In 1849, the whaling fleet in the Arctic and northern part of the North Pacific numbered 299 vessels. Two-thirds of these are said to have been United States vessels, but others were French and English, the latter chiefly from Australasia. A Russian Whaling Company for the North Pacific was formed at Abo, in Finland, with special privileges. This Company sent out six vessels in all.

Ibid., p. 572. In 1850, the British vessels "Herald," "Plover," and "Investigator," all despatched in search of Sir John Franklin's expedition, met in Kotzebue Sound, after passing through Behring Strait.

Ibid., p. 584. In the same year an armed Russian corvette was ordered to cruize in the Pacific, and in this year it is esti-

86 mated that 300, and in later years as many as 500 foreign whalers visited the Arctic and neighbouring waters.

Alaska, p. 585. Tebenkof's administration came to an end in this year.

Ibid., p. 572. In 1851, Nulato, a fort on the Yukon some way inland, was surprised by Indians and the inmates butchered,

including Lieutenant Barnard, an English officer of Her Majesty's ship "Enterprise," one of the ships engaged in the expedition in search of Sir John Franklin. The "Enterprise" passed Behring Strait on the 6th May, 1851. The United States whaling fleet is said to have been as numerous as in 1849.

"Encyclopædia Britannica," vol. xix, p. 321.

The interval between the close of Tebenkof's administration and the beginning of that of Voievodsky was filled by the temporary appointment of Rosenburg and Rudakof.

Alaska, p. 566.

In 1852, buildings at the Hot Springs, near Sitka, were destroyed by the Indians.

Ibid., p. 574.

The value of catch of the whaling fleet in the North Pacific in this year is estimated at 14,000,000 dollars. After 1852 the whaling industry gradually decreased.

Ibid., p. 603.

In 1853, war impending between England and Russia, the Hudson's Bay and Russian-American Companies influenced their respective Governments to prohibit hostilities on the north-west coast of America.

Ibid., p. 570.

In the same year the Russian-American Company again specially requested the Government to prohibit whalers from entering Okhotsk Sea, but without success. Instructions were, however, issued to Russian cruizers to prevent whalers from entering bays or gulfs, or from coming within 3 Italian miles of the shores.

Tikhmenieff, See Appendix, vol i, No. 5.

Tikhmenieff gives the following details:

Some time before the Company had written to the Foreign Office (22nd March, 1853):

Ibid.

> If it is found impracticable entirely to prohibit for a time fishing by foreigners in the Sea of Okhotsk, as an inland sea, would it not, at any rate, be possible officially to prohibit whalers from coming close to our shores and whaling in the bays and among the islands, detaching one of the cruizers of the Kamtchatka flotilla for this service?

The instructions to cruizers were approved on the 9th December, 1853. The cruizers were to see that no
87 whalers entered the bays or gulfs, or came within 3 Italian miles of the shores of Russian America (north of 51° 41′), the Peninsula of Kamtchatka, Siberia, the Kadjak Archipelago, the Aleutian Islands, the Pribilof and Commander Islands, and the others in Behring Sea, the Kuriles, Sakhalin, the Shantar Islands, and the others in the Sea of Okhotsk to the north of 46° 30′ north. The cruizers were instructed constantly to keep in view that—

> Our Government not only does not wish to prohibit or put obstacles in the way of whaling by foreigners in the northern part of the Pacific Ocean, but allows foreigners to take whales in the Sea of Okhotsk, which, as stated in these instructions, *is, from its geographical position, a Russian inland sea.* (These words are in italics in the original.)

In 1854, 525 foreign whalers were in Behring Sea and its vicinity. In the same year Voievodsky was elected Governor for the Company.

Alaska, p. 584.

Ibid., p. 585.

In 1855, the Abo Whaling Company went into liquidation.

Ibid., p. 585.

In 1856, 366 foreign whalers were reported as in Behring Sea and vicinity.

Ibid., p. 584.

Bancroft reports that in the year 1857—

> Of the 600 or 700 United States whalers that were fitted out in 1857, at least one-half, including most of the larger vessels, were engaged in the North Pacific, . . . including, of course, Behring Sea.

Ibid., p. 668.

50th Cong., 2nd Sess. Sen. Ex. Doc. No. 106, p. 251. Seward to Clay. February 24, 1868. See Appendix, vol. ii, Part II, No. 12. See p. 114 of Case.

Captain Manuel Enos, of the United States barque "Java," stated in 1867 that he had whaled unmolested in the bays of Okhotsk Sea for seventeen years previously.

Alaska, p. 592.

In 1859, the cession of Alaska to the United States began to be discussed privately.

Ibid., pp. 578, 579.

In 1860, the Russian-American Company applied for a new Charter for twenty years, to date from the 1st January, 1862, and Reports as to the condition of the Company were called for by the Government.

Ibid., p. 580.

The Russian population of the American Colonies at this date, apparently including native wives, numbered 784: Creoles, 1,700; native population estimated at over 7,000.

Alaska, p. 669. 88

In 1862, the value of the catch of the North Pacific whaling fleet was estimated at 800,000 dollars.

Fishery Industries of the United States, sec. v, vol. i, p. 209.

In 1863, the United States brig "Timandra" was engaged in the cod fishery off Saghalien Island, Okhotsk Sea. In succeeding years a number of vessels resorted to this sea for the cod fishery.

Alaska, p. 579.

In 1864, Maksutof took temporary charge for the Russian Government of the Company's affairs.

Ibid.

In 1865, negotiations between the Russian Company and the Government continued, but terms such as the Company would accept could not be arrived at.

Fishery Industries of the United States, sec. v, vol. i, p. 210.

In the spring of this year, the "North Pacific cod-fish fleet" was organized. It comprised seven vessels, all of which are believed to have fished in Okhotsk Sea.

Alaska, p. 580.

In 1866, the Russian Government still contemplated renewing the Company's Charter on certain terms. A Californian Company entered into treaty for a lease of the "coast strip" of Alaska, then held by the Hudson's Bay Company.

Fishery Industries of the United States, sec. v, vol. i, p. 210.

Eighteen vessels were engaged in the Okhotsk Sea cod fishery. The "Porpoise" initiated the fishery in the Shumagan Group, Alaska, finding there "safe harbours, fuel, water, and other facilities for prosecuting this business." Several British Columbian schooners also fished in Alaskan waters.

In 1867, Alaska was sold by Russia to the United States for 7,200,000 dollars.

Ibid., p. 210.

Nineteen United States vessels fished for cod in Okhotsk Sea or in Alaskan waters, the Shumagan fleet consisting of three vessels. The total catch amounted to nearly 1,000,000 fish.

"Philadelphia North American Gazette," Friday, April 12, 1867. Ex. Doc. No. 177, 2nd Sess., 40th Cong., p. 39.

In 1867, before the cession of Alaska, the whaling interest of the United States in these seas are thus referred to by a Philadelphia paper:

> Our whaling interests are now heaviest in the seas adjacent to Russian-America, both above and below Behring Strait.

Alaska, p. 669.

The value of the catch of the North Pacific whaling fleet was estimated at 3,200,000 dollars.

Ibid., p. 593

In 1868, the lease of the "coast strip" of Alaska to the Hudson's Bay Company by the Russian-American Company expired.

89 STATISTICS OF UNITED STATES WHALING INDUSTRY.

NORTH PACIFIC GROUNDS, INCLUDING OKHOTSK AND BEHRING SEAS AND ARCTIC OCEAN.)

The growth and decline of the whaling industry during the years discussed in this chapter may be conveniently illustrated by the following table, which shows the number of United States vessels in the North Pacific whaling fleet from 1841 to 1867. It is taken from "The Fishery Industries of the United States," 1887, section 5, vol. ii, pp. 84–85.

"Fishery Industries of the United States," sec. 5, vol. ii, pp. 84–85.

(This list does not include whalers of other nationalities.)

Year.	Number of vessels.	Year.	Number of vessels.
1841	20	1855	217
1842	29	1856	178
1843	108	1857	143
1844	170	1858	106
1845	263	1859	176
1846	292	1860	121
1847	177	1861	76
1848	150	1862	53
1849	155	1863	42
1850	144	1864	68
1851	138	1865	59
1852	278	1866	95
1853	238	1867	90
1854	232		

WALRUS HUNTING.

The whaling vessels frequenting Behring Sea and the Arctic Ocean, from the first, engaged to a certain extent in walrus hunting, and about 1860 such hunting began to be an important secondary object with the whalers. In subsequent years many thousand barrels of walrus oil and great quantities of skins and ivory were secured.

Ibid., p. 314.

90 The facts stated in this chapter establish—

That from the year 1821 to the year 1867 the rights of navigation and fishing in the waters of Behring Sea were freely exercised by the vessels of the United States, Great Britain, and other foreign nations, and were recognized as existing by Russia;

That the waters of Behring Sea were treated by Russia as being subject to the provisions of the Treaties of 1824 and 1825.

cédées et de dresser tout autre acte qui sera nécessaire à l'accomplissement de cette transaction. Mais la cession, avec le droit de possession immédiate, doit toutefois être considérée complete et absolue à l'échange des ratifications, sans attendre la remise formelle.

91 ARTICLE V.

Immédiatement après l'échange des ratifications de cette convention, les fortifications et les postes militaires qui se trouveront sur le Territoire cédé seront remis à l'agent des États-Unis, et les troupes Russes qui sont stationnées dans le dit territoire seront retirées dans un terme praticable et qui puisse convenir aux deux parties.

ARTICLE VI.

En considération de la susdite cession, les États-Unis s'engagent à payer à la Trésorerie à Washington dans le terme de dix mois après l'échange des ratifications de cette convention, sept millions deux cent mille dollars en or, au Représentant diplomatique ou tout autre agent de Sa Majesté l'Empereur de toutes les Russies dument autorisé à recevoir cette somme. La cession du Territoire avec droit de souveraineté faite par cette convention, est déclarée libre et dégagée de toutes reservations, privileges, franchises, ou possessions par des compagnies Russes ou tout autre, légalement constituées ou autrement, ou par des associations, sauf simplement les propriétaires possédant des biens privés individuels, et la cession ainsi faite transfère tous les droits, franchises, et privileges appartenant actuellement à la Russie dans le dit Territoire et ses dépendances.

ARTICLE VII.

Lorsque cette Convention aura été dûment ratifiée par Sa Majesté l'Empereur de toutes les Russies d'une part, et par le Président des États-Unis avec l'avis et le consentement du Sénat de l'autre, les ratifications en seront échangées à Washington dans le terme de trois mois, à compter du jour de la signature, ou plus tôt si faire se peut.

En foi de quoi les plénipotentiaires respectifs ont signé cette convention et y ont apposé le sceau de leurs armes.

Fait à Washington, le 18 (30) jour de Mars, de l'an de Notre Seigneur mille huit cent soixante-sept.

[L. S.] ÉDOUARD DE STOECKL.
[L. S.] WILLIAM H. SEWARD.

THE TREATY DISCUSSED.

It may be remarked, in the first place, that though the expression "water boundary" in the question at the head of this chapter may be accepted as an approximate paraphrase of the original expression employed in the Treaty, it is not a correct translation of the words "la limite occidentale des territoires cédés," which are rendered in the official English translation, published by the United States Government, "the western limit within which the territories and dominion conveyed are contained."

United States Statutes at Large, vol. xv, 1869, pp. 539–543.

95 NO SPECIAL DOMINION OVER WATERS.

It will be observed that in none of these Articles is there a reference to any extraordinary or special dominion over the waters of the Behring Sea, nor, indeed, over any other portion of the North Pacific Ocean. Even in the passage last cited the word "dominion" appears to have no equivalent in the original French version. Neither is there a suggestion that any special maritime right existed which could be conveyed. The language of the Convention is, on the

contrary, most carefully confined to *territory* with the right of sovereignty actually possessed by Russia at the date of the cession.

In Article I the limits of a portion of the Behring Sea are defined in order to show the boundaries within which the territory ceded "sur le Continent d'Amérique ainsi que les iles contiguës" is contained.

In Article VI, Russia again makes it emphatic that she is conveying "les droits, franchises, et privilèges appartenant actuellement à la Russie dans le dit Territoire et ses dépendances."

The final clause of Article I distinctly negatives any implication of an attempt to convey any portion of the high seas—for the said western line is drawn, not so as to embrace any part of the high seas, but, as expressed in the apt language of the Treaty—"*de manière à enclurer, dans le dit territoire cédé, toutes les Iles Aléoutes situées à l'est de ce méridien.*"

Had the intention been to convey the waters of the Behring Sea eastward of the western limit, the words "ainsi que les iles contigües" would not have been used, but words would have been chosen to indicate the area of the open sea conveyed, and it would have been unnecessary to specifically mention the islands.

CHARACTER OF THE WESTERN GEOGRAPHICAL LIMIT, AND REASON FOR ITS ADOPTION. ALEUTIAN ISLANDS, ETC.

There was good reason for a line of demarcation of the character specified.

The islands in the Aleutian chain and in Behring Sea were not well defined geographically, and could therefore not be used for the accurate delimitation of territory ceded.

In fact, even the term Aleutian Archipelago was indefinite in its signification, often including islands which were on the Asiatic side of Behring Sea, and far from the Island of Attu, the westernmost island of the Aleutian group intended to be ceded.

96 Greenhow, for instance, writes:

The *Aleutian Archipelago* is considered by the Russians as consisting of *three groups* of islands. Nearest Alaska are the *Fox Islands*, of which the largest are *Unimak*, *Unalashka*, and *Umnak*; next to these are the *Andreanowsky Islands*, among which are *Atscha*, *Tanaga*, and *Kanaga*, with many smaller islands, sometimes called the *Rat Islands*; the most western group is that first called the *Aleutian* or *Alcoutsky Islands*, which are *Attu*, *Mednoi* (or *Copper Island*), and *Beering's Island* (p. 5).

"Memoir, Historical and Political, of the Northwest Coast of North America, &c., by Robert Greenhow, Translator and Librarian to the Department of State." Senate, 26th Cong., 1st Sess. [174], 1840.

In the "History of Oregon and California," &c., by the same author, the Commander Islands (Copper and Behring Islands) are again classed among the Aleutian Islands, which are said to be included under two governmental districts by the Russians, the Commander Islands belonging to the western of these districts (p. 38). Greenhow also states that the name "Aleutian Islands" was first applied to Copper and Behring Islands.

Indeed, in many maps of various dates, the title Aleutian Islands is so placed as impliedly to include the Commander Islands, in some it is restricted to a portion of the chain now recognized by that name. Similar diversity in usage, with frequent instances of the inclusion of the Commander Islands as a part of the Aleutian Islands is found in geographical works of various dates.

From this uncertainty in usage in respect to the name of the Aleutian Islands (though these are now commonly considered to end to the westward at Attu Island), it is obvious that, in defining a general boundary between the Russian and United States possessions, it might have given rise to grave subsequent doubts and questions to have stated merely that the whole of the Aleutian Islands belonged to the United States. Neither would this have covered the case presented by the various scattered islands to the north of the Aleutian chain proper, while to have enumerated the various islands, which often appeared and still sometimes appear on different maps under alternative names, would have been perplexing and unsatisfactory, from the very great number of these to be found in and about Behring Sea.

It was thus entirely natural to define conventionally a general division fixed by an imaginary line so drawn as according to the best published maps to avoid touching any known island.

IMPERFECT SURVEY OF BEHRING SEA.

97 The occasion for a western limit of the kind adopted is the more obvious, when it is borne in mind that many of the islands in and about Behring Sea are even at the present day very imperfectly surveyed, and more or less uncertain in position.

Appendix No. 2 of United States Coast Survey. Coast Pilot of Alaska, 1869. Part I, p. 203.

The following is from the "Coast Pilot of Alaska" (United States Coast Survey 1869):

The following list of the geographical positions of places, principally upon the coast of Alaska, has been compiled chiefly from Russian authorities. In its preparation the intention was to introduce all determinations of position that appeared to have been made by actual observation, even when the localities are quite close. In the Archipelago Alexander most of Vancouver's latitudes have been introduced, although in such waters they are not of great practical value.

It is believed the latitudes are generally within 2 miles of the actual position, and in many cases where several observers had determined them independently, the errors may be less than a mile. The longitudes of harbours regularly visited by vessels of the Russian-American Company appear to be fairly determined, except toward the western termination of the Aleutian chain, where large discrepancies, reaching 30′ of arc, are exhibited by the comparison of results between Russian authorities and the United States Exploring Expedition to the North Pacific in 1855. Positions by different authorities are given in some instances to show these discrepancies. The comparison of latitudes and longitudes at Victoria, Fort Simpson, Sitka, Chilkaht, Kadiak, and Unalaska, between English and Russian and the United States coast survey determinations, exhibit larger errors than might have been expected.

The uncertainties that exist in the geographical position of many islands, headlands, straits, and reefs, the great dissimilarity of outline and extent of recent examinations of some of the Western Aleutians, the want of reliable data concerning the tides, currents, and winds, the almost total want of detailed descriptions of headlands, reefs, bays, straits, &c., and the circumstantial testimony of the

Aleutian fishermen concerning islands visited by them and not laid down upon the charts, point to the great necessity for an exhaustive geographical reconnaissance of the coast, as was done for the coast of the United States between Mexico and British Columbia.

Even the latest United States chart of what are now known as the Aleutian Islands (No. 68, published in 1891) is based chiefly on information obtained by the "North Pacific Surveying Expedition" under Rogers, which was carried out in the schooner "Fenimore Cooper" in 1855.

On sheet 1 of this chart (embracing the western part
98 of the Aleutian Islands) such notes as the following are found:

The latest Russian charts place Bouldyr Island 10 miles due south of the position given here, which is from a determination by Sumner's method.

The low islands between Goroloi and Ioulakh, excepting the west point of Unalga, are from Russian authorities, which, however, are widely discrepant.

Similarly, in the corresponding British admiralty chart (No. 1501) published in 1890 we find the remark:

Mostly from old and imperfect British, Russian, and American surveys.

On the chart of Behring Sea, published by the United States in 1891, a small islet is shown north of St. Matthew Island, near the centre of the sea, which does not appear on the special map of St. Matthew Island published in 1875, and which could not be found in 1891.

LIMIT CONTINUED THROUGH ARCTIC OCEAN.

That the line drawn through Behring Sea between Russian and United States possessions was thus intended and regarded merely as a ready and definite mode of indicating which of the numerous islands in a partially explored sea should belong to either Power, is further shown by a consideration of the northern portion of the same line, which is the portion first defined in the Treaty. From the initial point in Behring Strait, which is carefully described, the "limite occidentale" of territories ceded to the United States "remonte en ligne directe, sans limitation, vers le nord, jusqu'à ce qu'elle se perd dans la Mer Glaciale," or in the United States official translation "proceeds due north without limitation into the same Frozen Ocean.

The "geographical limit" in this the northern part of its length runs through an *ocean* which had at no time been surrounded by Russian territory, and which had never been claimed as reserved by Russia in any way; to which, on the contrary, special stipulations for access had been made in connection with the Anglo-Russian Convention of 1825, and which since 1848 or 1849 had been frequented by whalers and walrus-hunters of various nations, while no single fur-seal has ever been found within it. It is therefore very clear that the geographical limit thus pro-
99 jected towards the north could have been intended only to define the ownership of such islands, if any, as might subsequently be discovered in this imperfectly explored ocean; and when, therefore, the Treaty proceeded

to define the course of "*the same western limit*" (*cette limite occidentale*) from the initial point in Behring Strait to the southward and westward across Behring Sea, it is obvious that it continued to possess the same character and value.

DEBATES IN CONGRESS ON THE CESSION OF ALASKA, 1867, 1868.

Neither the debates in Congress—which preceded and resulted in the cession and its ratification by the United States—nor the Treaty by which it was carried into effect, nor the subsequent legislation by the United States, indicate the transfer or acquisition of any exclusive or extraordinary rights in Behring Sea. On the contrary, they show that no such idea was then conceived.

MEMORIAL OF LEGISLATURE OF TERRITORY OF WASHINGTON.

In answer to a Resolution of the House of Representatives of the 19th December, 1867, calling for all correspondence and information in the possession of the Executive in regard to the country proposed to be ceded by the Treaty, the Memorial of the Legislature of Washington Territory (which was made the occasion for the negotiation), together with Mr. Sumner's speech in the Senate, were among other documents transmitted.

This Memorial shows that United States citizens were already engaged in fishing from Cortez Banks to Behring Strait, and that they had never been under any apprehension of interference with such fishing by Russia, but desired to secure coast facilities, especially for the purposes of curing fish and repairing vessels.

The Memorial is as follows:

To his Excellency Andrew Johnson, President of the United States.

United States Senate, Ex. Doc. No. 177, 40th Cong., 2nd Sess., p. 132.

Your memorialists, the Legislative Assembly of Washington Territory, beg leave to show that abundance of codfish, halibut, and salmon, of excellent quality, have been found along the shores of the Russian possessions. Your memorialists respectfully request your excellency to obtain such rights and privileges of the Government
of Russia as will enable our fishing-vessels to visit the ports
100 and harbours of its possessions to the end that fuel, water, and provisions may be easily obtained; that our sick and disabled fishermen may obtain sanitary assistance, together with the privilege of curing fish and repairing vessels in need of repairs. Your memorialists further request that the Treasury Department be instructed to forward to the Collector of Customs of this Puget Sound district such fishing licences, abstract-journals, and log-books as will enable our hardy fishermen to obtain the bounties now provided and paid to the fishermen in the Atlantic States. Your memorialists finally pray your excellency to employ such ships as may be spared from the Pacific naval fleet in exploring and surveying the fishing banks known to navigators to exist along the Pacific Coast from the Cortez bank to Behring Straits.

And, as in duty bound, your memorialists will ever pray.

Passed the House of Representatives, January 10, 1866.

EDWARD ELDRIDGE,
Speaker House of Representatives.

Passed the Council, January 13, 1866.

HARVEY K. HINES,
President of the Council.

DEBATES IN CONGRESS.

In the debate which took place in Congress upon the subject of the acquisition of Alaska, the value of the proposed purchase, and the nature of the interests and property proposed to be acquired were fully discussed.

The debate was protracted, and many leading Members spoke at length. To none of them did it occur to suggest the existence of an exclusive jurisdiction over any waters or fisheries distant more than 3 miles from land.

On the contrary, Mr. Sumner, who had charge of the measure in the Senate, after pointing out that seals were to be found on the "rocks and recesses" of the territory to be acquired, which would therefore make the acquisition more valuable, in touching upon the fisheries and marine animals found at sea, admitted that they were free to the world, contending, however, that the possession of the coast would give advantages to the United States fishermen for the outfitting of their vessels and the curing of their catch.

With reference to the whale fishery he remarked:

The Narwhal with his two long tusks of ivory, out of which was made the famous throne of the early Danish kings, belongs to the Frozen Ocean; but he, too, strays into the straits below. As no sea is now *mare clausum*, all these may be pursued by a ship under any

101 flag, except directly on the coast and within its territorial limit.

And yet it seems as if the possession of this coast as a commercial base must necessarily give to its people peculiar advantages in this pursuit.

United States Senate, Ex. Doc. No. 177, 40th Cong., 2nd Sess., p. 189. See Appendix, vol. I, No. 6.

Mr. Washburn, of Wisconsin, said:

But, sir, there has never been a day since Vitus Behring sighted that coast until the present when the people of all nations have not been allowed to fish there, and to cure fish so far as they can be cured in a country where they have only from forty-five to sixty pleasant days in the whole year. England, whose relations with Russia are far less friendly than ours, has a treaty with that Government by which British subjects are allowed to fish and cure fish on that coast. Nay, more, she has a treaty giving her subjects forever the free navigation of the rivers of Russian America, and making Sitka a free port to the commerce of Great Britain.

United States Congressional Debates, from "Congressional Globe," December 11, 1867, 40th Cong., 2nd Sess., Part I, p. 138.

In 1868 Mr. Ferriss spoke as follows:

That extensive fishing banks exist in these northern seas is quite certain; but what exclusive title do we get to them? They are said to be far out at sea, and now here within 3 marine leagues of the islands or main shore.

United States Congressional Debates, from "Congressional Globe," July 1, 1868, 40th Cong., 2nd Sess., Part IV, p. 3667.

Mr. Peters, in the course of his speech, remarked:

I believe that all the evidence upon the subject proves the proposition of Alaska's worthlessness to be true. Of course, I would not deny that her cod fisheries, if she has them, would be somewhat valuable; but it seems doubtful if fish can find sun enough to be cured on her shores, and if even that is so, my friend from Wisconsin (Mr. Washburn) shows pretty conclusively that in existing treaties we had that right already.

Ibid., p. 3668.

Mr. Williams, in speaking of the value of the fisheries, said:

And now as to the fishes, which may be called, I suppose, the *argumentum piscatorium*. . . . Or is it the larger tenants of the ocean, the more gigantic game, from the whale, and seal, and walrus, down to the halibut and cod, of which it is intended to open the pursuit to the adventurous fishermen of the Atlantic coast, who are there already in a domain that is free to all? My venerable colleague (Mr. Stevens), who discourses as though he were a true brother of the angle himself, finds the foundations of this great Republic like those of Venice and Genoa among the fishermen. Beautiful as it shows above,

United States Congressional Debates, from Appendix to "Congressional Globe," July 9, 1868, 40th Cong., 2nd Sess., Part V, p. 490. See also Alaska, p. 670.

like the fabled mermaid—"*desinit in piscem mulier formosa superne*," it ends, according to him, as does the Alaska argument itself, in nothing but a fish at last. But the resources of the Atlantic are now, he says, exhausted. The Falkland Islands are now only a resting place in our maritime career, and American liberty can no longer live except

102 by giving to its founders a wider range upon a vaster sea.

Think of it, he exclaims—I do not quote his precise language—what a burning shame is it not to us that we have not a spot of earth in all that watery domain, on which to rest a mast or sail, or dry a net or fish?—forgetting, all the while, that we have the range of those seas without the leave of anybody; that the privilege of landing anywhere was just as readily attainable, if wanted, as that of hunting on the territory by the British; and, above all, that according to the official Report of Captain Howard, no fishing bank has been discovered within the Russian latitudes.

It is therefore established—

That Russia's rights "as to jurisdiction and as to the seal fisheries in Behring Sea," referred to in Point 4 of Article VI of the Treaty of 1892, were such only as were hers according to international law, by reason of her right to the possession of the shores of Behring Sea and the islands therein.

That the Treaty of Cession does not purport either expressly or by implication to convey any dominion in the waters of Behring Sea, other than in the territorial waters which would pass according to international law and the practice of nations as appurtenant to any territory conveyed.

That no dominion in the waters of Behring Sea other than in territorial waters thereof did, in fact, pass to the United States by the Treaty of 1867.

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103 CHAPTER VI.

HEAD (F).—*The Action of the United States and Russia from 1867 to 1886.*

When, in consequence of the cession of Alaska as a whole, the Russians relinquished their sovereignty over the Pribiloff (or "Seal") Islands in 1867, sealers at once landed on the breeding resorts of the fur seal on these islands. Those who came from the New England States found themselves confronted by competitors from the Sandwich Islands. They proceeded to slaughter seals upon the breeding grounds in the manner which had usually been practiced by sealers on grounds where no Regulations were in force.

Increased slaughter of seals.

Elliott, Census Report, p. 25. H. R., Ex. Doc. No. 3883, 50th Cong., 2nd Sess., pp. 87, 88. Ibid., p. 70.

In the year 1868, at least 240,000 seals are reported to have been taken, and 87,000 in the following year. In view of this wholesale destruction of seals, the United States Government decided, in the exercise of their undoubted right of territorial sovereignty, to lease these seal rookeries, and to re-establish by means of the necessary legislation, the lapsed Russian Regulations which had restricted the killing of the fur seal.

ACT OF JULY 27, 1868. KILLING OF SEALS PROHIBITED.

Accordingly, on the 27th July, 1868, an Act passed the Congress of the United States, entitled "An act to extend the Laws of the United States relating to Customs and Navigation over the territory ceded to the United States by Russia, to establish a Collection District therein, and for other purposes," of which section 6 provides:

That it shall be unlawful for any person or persons to kill any otter, mink, marten, sable, or fur seal, or other fur-bearing animal within the limits of *said territory, or in the waters thereof.* United States Statutes at Large, vol. xv, p. 241.

On the 3rd of March, 1869, a Resolution was passed by the Senate and House of Representatives specially reserving for Government purposes the Islands of St. Paul and St. George, and forbidding any one to land or remain there without permission of the Secretary of the Treasury. Ibid., p. 348.

SECRETARY BOUTWELL'S REPORT.

Mr. Boutwell's Report, as Secretary of the Treasury, preceded an Act of the 1st July, 1870. This Report discloses no suggestion of jurisdiction at a greater distance than 3 miles from the shore-line. With knowledge of the raids upon the islands and the existence of seal-hunting schooners, Mr. Boutwell dwelt upon the means of protecting the seal islands only. He recommended that the Government of the United States should itself undertake the management of the business of the islands, and should "exclude everybody but its own servants and agents . . . and subject vessels that touch there to forfeiture, except when they are driven to seek shelter or for necessary repairs." 41st Cong., 2nd Sess., Ex. Doc. No. 109.

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ACT OF JULY, 1870.

On the 1st of July, 1870, an Act was passed entitled, "An Act to prevent the extermination of Fur-bearing Animals in Alaska," from which the following are extracts: See Blue Book, United States, No. 2, 1890, p. 12. See Appendix, vol. iii.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that it shall be unlawful to kill any fur seal upon the islands of St. Paul and St. George, *or in the waters adjacent thereto*, except during the months of June, July, September, and October in each year; and it shall be unlawful to kill such seals at any time by the use of fire-arms, or use other means tending to drive the seals away from said islands. . .

Section 2. And be it further enacted, that it shall be unlawful to kill any female seal, or any seal less than one year old, at any season of the year, except as above provided; and it shall also be unlawful to kill any seal *in the waters adjacent to said islands*, or on the beaches, cliffs, or rocks where they haul up from the sea to remain.

. . . . .

SEAL ISLANDS TO BE LEASED.

Section 4. And be it further enacted, that immediately after the passage of this Act, the Secretary of the Treasury shall lease, for the rental mentioned in section 6 of this Act . . . for a term of twenty years, from the 1st day of May, 1870, the right to engage in the business of taking fur seals on the Islands of St. Paul and St. George, and to send a vessel or vessels to said islands for the skins of such seals.

. . . . .

BEST COPY AVAILABLE

PX 11

AWARD

OF

THE TRIBUNAL OF ARBITRATION

CONSTITUTED

UNDER THE TREATY CONCLUDED AT WASHINGTON,

THE 29TH OF FEBRUARY, 1892,

BETWEEN

THE UNITED STATES OF AMERICA
AND HER MAJESTY THE QUEEN OF THE UNITED KINGDOM
OF GREAT BRITAIN AND IRELAND.

Whereas by a treaty between the United States of America and Great Britain, signed at Washington, February 29, 1892, the ratifications of which by the Governments of the two countries were exchanged at London on May the 7th, 1892, it was, amongst other things, agreed and concluded that the questions which had arisen between the Government of the United States of America and the Government of Her Britannic Majesty, concerning the jurisdictional rights of the United States in the waters of Bering's Sea, and concerning also the preservation of the fur-seal in or habitually resorting to the said sea, and the rights of the citizens and subjects of either country as regards the taking of fur-seals in or habitually resorting to the said waters, should be submitted to a Tribunal of Arbitration, to be composed of seven Arbitrators, who should be appointed in the following manner—that is to say: Two should be named by the President of the United States; two should be named by Her Britannic Majesty; His Excellency the President of the French Republic should be jointly requested by the High Contracting Parties to name one; His Majesty the King of Italy should be so requested to name one; His Majesty the King of Sweden and Norway should be so requested to name one; the seven Arbitrators to be so named should be jurists of distinguished reputation in their respective countries, and the selecting Powers should be requested to choose, if possible, jurists who are acquainted with the English language;

And whereas it was further agreed by Article II of the said Treaty that the Arbitrators should meet at Paris within twenty days after the

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Fur Seal Arbitration (1895).

delivery of the Counter-Cases mentioned in Article IV, and should proceed impartially and carefully to examine and decide the questions which had been or should be laid before them as in the said Treaty provided on the part of the Governments of the United States and of Her Britannic Majesty, respectively, and that all questions considered by the Tribunal, including the final decision, should be determined by a majority of all the Arbitrators;

And whereas by Article VI of the said Treaty, it was further provided as follows:

In deciding the matters submitted to the said Arbitrators, it is agreed that the following five points shall be submitted to them, in order that their award shall embrace a distinct decision upon each of said five points, to wit:

1. What exclusive jurisdiction in the sea now known as the Bering's Sea, and what exclusive rights in the seal fisheries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

2. How far were these claims of jurisdiction as to the seal fisheries recognized and conceded by Great Britain?

3. Was the body of water now known as the Bering's Sea included in the phrase *Pacific Ocean*, as used in the Treaty of 1825 between Great Britain and Russia; and what rights, if any, in the Bering's Sea were held and exclusively exercised by Russia after said Treaty?

4. Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Bering's Sea east of the water boundary, in the Treaty between the United States and Russia of the 30th of March, 1867, pass unimpaired to the United States under that Treaty?

5. Has the United States any right, and if so, what right of protection or property in the fur-seals frequenting the islands of the United States in Bering Sea when such seals are found outside the ordinary three-mile limit?

And whereas, by Article VII of the said Treaty, it was further agreed as follows:

If the determination of the foregoing questions as to the exclusive jurisdiction of the United States shall leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in, or habitually resorting to, the Bering Sea, the Arbitrators shall then determine what concurrent Regulations, outside the jurisdictional limits of the respective Governments, are necessary, and over what waters such regulations should extend;

The High Contracting Parties furthermore agree to cooperate in securing the adhesion of other Powers to such Regulations;

And whereas, by Article VIII of the said Treaty, after reciting that the High Contracting Parties had found themselves unable to agree upon a reference which should include the question of the liability of each for the injuries alleged to have been sustained by the other, or by its citizens, in connection with the claims presented and urged by it, and that "they were solicitous that this subordinate question should not interrupt or longer delay the submission and determination of the main questions," the High Contracting Parties agreed that "either of them might submit to the Arbitrators any question of fact involved in said claims and ask for a finding thereon, the question of the liability

of either Government upon the facts found to be the subject of further negotiation;"

And whereas the President of the United States of America named the Honorable John M. Harlan, Justice of the Supreme Court of the United States, and the Honorable John T. Morgan, Senator of the United States, to be two of the said Arbitrators, and Her Britannic Majesty named the Right Honorable Lord Hannen and the Honorable Sir John Thompson, minister of justice and attorney-general for Canada, to be two of the said Arbitrators, and His Excellency the President of the French Republic named the Baron de Courcel, Senator, Ambassador of France, to be one of the said Arbitrators, and His Majesty the King of Italy named the Marquis Emilio Visconti Venosta, former Minister of Foreign Affairs and Senator of the Kingdom of Italy, to be one of the said Arbitrators, and His Majesty the King of Sweden and Norway named Mr. Gregers Gram, minister of state, to be one of the said Arbitrators;

And whereas We, the said Arbitrators, so named and appointed, having taken upon ourselves the burden of the said Arbitration, and having duly met at Paris, proceeded impartially and carefully to examine and decide all the questions submitted to us, the said Arbitrators, under the said Treaty, or laid before us as provided in the said Treaty on the part of the Governments of Her Britannic Majesty and the United States, respectively;

Now We, the said Arbitrators, having impartially and carefully examined the said questions, do in like manner by this our Award decide and determine the said questions in manner following, that is to say, we decide and determine as to the five points mentioned in Article VI as to which our Award is to embrace a distinct decision upon each of them:

As to the first of the said five points, We, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine as follows:

By the Ukase of 1821 Russia claimed jurisdiction in the sea now known as the Bering's Sea to the extent of 100 Italian miles from the coasts and islands belonging to her, but, in the course of the negotiations which led to the conclusion of the Treaties of 1824 with the United States and of 1825 with great Britain, Russia admitted that her jurisdiction in the said sea should be restricted to the reach of cannon shot from shore, and it appears that from that time up to the time of the cession of Alaska to the United States Russia never asserted in fact or exercised any exclusive jurisdiction in Bering's Sea or any exclusive rights in the seal fisheries therein beyond the ordinary limit of territorial waters.

As to the second of the said five points, We, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis

Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that Great Britain did not recognize or concede any claim, upon the part of Russia, to exclusive jurisdiction as to the seal fisheries in Bering Sea, outside of ordinary territorial waters.

As to the third of the said five points, as to so much thereof as requires us to decide whether the body of water now known as the Bering Sea was included in the phrase "Pacific Ocean" as used in the Treaty of 1825, between Great Britain and Russia, We, the said Arbitrators, do unanimously decide and determine that the body of water now known as the Bering Sea was included in the phrase "Pacific Ocean" as used in the said Treaty.

And as to so much of the said third point as requires us to decide what rights, if any, in the Bering Sea were held and exclusively exercised by Russia after the said Treaty of 1825, We, the said Baron de Courcel, Mr. Justice Harlan, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that no exclusive rights of jurisdiction in Bering Sea and no exclusive rights as to the seal fisheries therein were held or exercised by Russia outside of ordinary territorial waters after the Treaty of 1825.

As to the fourth of the said five points, We, the said Arbitrators, do unanimously decide and determine that all the rights of Russia as to jurisdiction and as to the seal fisheries in Bering Sea, east of the water boundary, in the Treaty between the United States and Russia of the 30th March, 1867, did pass unimpaired to the United States under the said Treaty.

As to the fifth of the said five points, We, the said Baron de Courcel, Lord Hannen, Sir John Thompson, Marquis Visconti Venosta, and Mr. Gregers Gram, being a majority of the said Arbitrators, do decide and determine that the United States has not any right of protection or property in the fur seals frequenting the islands of the United States in Bering Sea, when such seals are found outside the ordinary three-mile limit.

And whereas the aforesaid determination of the foregoing questions as to the exclusive jurisdiction of the United States mentioned in Article VI leaves the subject in such a position that the concurrence of Great Britain is necessary to the establishment of Regulations for the proper protection and preservation of the fur-seal in or habitually resorting to the Bering Sea, the Tribunal having decided by a majority as to each Article of the following Regulations, We, the said Baron de Courcel, Lord Hannen, Marquis Visconti Venosta, and Mr. Gregers Gram, assenting to the whole of the nine Articles of the following Regulations, and being a majority of the said Arbitrators, do decide and determine, in the mode provided by the Treaty, that the following

concurrent Regulations outside the jurisdictional limits of the respective Governments are necessary and that they should extend over the waters hereinafter mentioned; that is to say:

ARTICLE 1.

The Governments of the United States and of Great Britain shall forbid their citizens and subjects respectively to kill, capture, or pursue, at any time and in any manner whatever, the animals commonly called fur seals, within a zone of sixty miles around the Pribilof Islands, inclusive of the territorial waters.

The miles mentioned in the preceding paragraph are geographical miles of sixty to a degree of latitude.

ARTICLE 2.

The two Governments shall forbid their citizens and subjects respectively to kill, capture, or pursue, in any manner whatever, during the season extending, each year, from the 1st of May to the 31st of July, both inclusive, the fur seals on the high sea, in the part of the Pacific Ocean, inclusive of the Bering Sea, which is situated to the north of the 35th degree of North latitude, and eastward of the 180th degree of longitude from Greenwich till it strikes the water boundary described in Article 1 of the Treaty of 1867 between the United States and Russia, and following that line up to Bering Straits.

ARTICLE 3.

During the period of time and in the waters in which the fur seal fishing is allowed, only sailing vessels shall be permitted to carry on or take part in fur-seal fishing operations. They will, however, be at liberty to avail themselves of the use of such canoes or undecked boats, propelled by paddles, oars, or sails, as are in common use as fishing boats.

ARTICLE 4.

Each sailing vessel authorized to fish for fur seals must be provided with a special license issued for that purpose by its Government and shall be required to carry a distinguishing flag to be prescribed by its Government.

ARTICLE 5.

The masters of the vessels engaged in fur seal fishing shall enter accurately in their official log book the date and place of each fur seal fishing operation, and also the number and sex of the seals captured upon each day. These entries shall be communicated by each of the two Governments to the other at the end of each fishing season.

ARTICLE 6.

The use of nets, firearms, and explosives shall be forbidden in the fur seal fishing. This restriction shall not apply to shotguns when such fishing takes place outside of Bering's Sea, during the season when it may be lawfully carried on.

ARTICLE 7.

The two Governments shall take measures to control the fitness of the men authorized to engage in fur seal fishing; these men shall have been proved fit to handle with sufficient skill the weapons by means of which this fishing may be carried on.

ARTICLE 8.

The regulations contained in the preceding articles shall not apply to Indians dwelling on the coasts of the territory of the United States or of Great Britain and carrying on fur seal fishing in canoes or undecked boats not transported by or used in connection with other vessels and propelled wholly by paddles, oars, or sails, and manned by not more than five persons each, in the way hitherto practiced by the Indians, provided such Indians are not in the employment of other persons, and provided that, when so hunting in canoes or undecked boats, they shall not hunt fur seals outside of territorial waters under contract for the delivery of the skins to any person.

This exemption shall not be construed to affect the municipal law of either country, nor shall it extend to the waters of Bering Sea or the waters of the Aleutian Passes.

Nothing herein contained is intended to interfere with the employment of Indians as hunters or otherwise in connection with fur sealing vessels as heretofore.

ARTICLE 9.

The concurrent regulations hereby determined with a view to the protection and preservation of the fur seals shall remain in force until they have been, in whole or in part, abolished or modified by common agreement between the Governments of the United States and of Great Britain.

The said concurrent regulations shall be submitted every five years to a new examination, so as to enable both interested Governments to consider whether, in the light of past experience, there is occasion for any modification thereof.

And whereas the Government of Her Britannic Majesty did submit to the Tribunal of Arbitration by Article VIII of the said Treaty certain questions of fact involved in the claims referred to in the said Article VIII, and did also submit to us, the said Tribunal, a statement of the said facts, as follows, that is to say:

Findings of fact proposed by the Agent of Great Britain and agreed to as proved by the Agent for the United States, and submitted to the Tribunal of Arbitration for its consideration.

1. That the several searches and seizures, whether of ships or goods, and the several arrests of masters and crews, respectively mentioned in the Schedule to the British Case, pages 1 to 60, inclusive, were made by the authority of the United States Government. The questions as to the value of the said vessels or their contents, or either of them, and the question as to whether the vessels mentioned in the Schedule to the British Case, or any of them, were wholly or in part the actual property of citizens of the United States, have been withdrawn from and have not been considered by the Tribunal, it being understood that it is open to the United States to raise these questions, or any of them, if they think fit, in any future negotiations as to the liability of the United States Government to pay the amounts mentioned in the Schedule to the British Case;

2. That the seizures aforesaid, with the exception of the "Pathfinder," seized at Neah-Bay, were made in Bering Sea at the distances from shore mentioned in the Schedule annexed hereto marked "C";

3. That the said several searches and seizures of vessels were made by public armed vessels of the United States the commanders of which had, at the several times when they were made, from the Executive Department of the Government of the United States, instructions, a copy of one of which is annexed hereto, marked "A", and that the others were, in all substantial respects, the same: that in all the instances in which proceedings were had in the District Courts of the United States resulting in condemnation, such proceedings were begun by the filing of libels, a copy of one of which is annexed hereto, marked "B", and that the libels in the other proceedings were in all substantial respects the same: that the alleged acts or offenses for which said several searches and seizures were made were in each case done or committed in Bering Sea at the distances from shore aforesaid; and that in each case in which sentence of condemnation was passed, except in those cases when the vessels were released after condemnation, the seizure was adopted by the Government of the United States: and in those cases in which the vessels were released the seizure was made by the authority of the United States; that the said fines and imprisonments were for alleged breaches of the municipal laws of the United States, which alleged breaches were wholly committed in Bering Sea at the distances from the shore aforesaid;

4. That the several orders mentioned in the Schedule annexed hereto and marked "C" warning vessels to leave or not to enter Bering Sea were made by public armed vessels of the United States the commanders of which had, at the several times when they were given, like instructions as mentioned in finding 3, and that the vessels so warned were engaged in sealing or prosecuting voyages for that purpose, and that such action was adopted by the Government of the United States;

5. That the District Courts of the United States in which any proceedings were had or taken for the purpose of condemning any vessel seized as mentioned in the Schedule to the Case of Great Britain, pages 1 to 60, inclusive, had all the jurisdiction and powers of Courts of Admiralty, including the prize jurisdiction, but that in each case the sentence pronounced by the Court was based upon the grounds set forth in the libel.

ANNEX A.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, April 21, 1886.

SIR: Referring to Department letter of this date, directing you to proceed with the revenue steamer *Bear*, under your command, to the seal islands, etc., you are hereby clothed with full power to enforce the law contained in the provisions of Section 1956 of the United States Revised Statutes, and directed to seize all vessels and arrest and deliver to the proper authorities any or all persons whom you may detect violating the law referred to, after due notice shall have been given.

You will also seize any liquors or fire-arms attempted to be introduced into the country without proper permit, under the provisions of Section 1955 of the Revised Statutes and the Proclamation of the President dated 4th February, 1870.

Respectfully yours,
(Signed) C. S. FAIRCHILD,
Acting Secretary.

Capt. M. A. HEALY,
Commanding Revenue Steamer Bear, San Francisco, California.

ANNEX B.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

AUGUST SPECIAL TERM, 1886.

To the Honorable Lafayette Dawson, Judge of said District Court:

The libel information of M. D. Ball, Attorney for the United States for the District of Alaska, who prosecutes on behalf of said United States, and being present here in Court in his proper person, in the name and on behalf of the said United States, against the schooner *Thornton*, her tackle, apparel, boats, cargo, and furniture, and against all persons intervening for their interest therein, in a cause of forfeiture, alleges and informs as follows:

That Charles A. Abbey, an officer in the Revenue-Marine Service of the United States, and on special duty in the waters of the district of Alaska, heretofore, to wit, on the first day of August, 1886, within the limits of Alaska Territory, and in the waters thereof, and within the civil and judicial district of Alaska, to wit, within the waters of that portion of Bering Sea belonging to the said district on waters navigable from the sea by vessels of 10 or more tons burden, seized the ship or vessel commonly called a schooner, the *Thornton*, her tackle, apparel, boats, cargo, and furniture, being the property of some person or persons to the said Attorney unknown, as forfeited to the United States, for the following causes:

That the said vessel or schooner was found engaged in killing fur-seal within the limits of Alaska Territory, and in the waters thereof, in violation of Section 1956 of the Revised Statutes of the United States.

And the said Attorney saith that all and singular the premises are and were true, and within the Admiralty and maritime jurisdiction of this Court, and that by reason thereof, and by force of the statutes of the United States in such cases made and provided, the aforementioned and described schooner or vessel, being a vessel of over 20 tons burden, her tackle, apparel, boats, cargo, and furniture, became and are forfeited to the use of the said United States, and that said schooner is now within the district aforesaid.

Wherefore the said Attorney prays the usual process and monition of this honorable Court issue in this behalf, and that all persons interested in the before-

mentioned and described schooner or vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said schooner or vessel, her tackle, apparel, boats, cargo, and furniture may, for the cause aforesaid, and others appearing, be condemned by the definite sentence and decree of this honorable Court, as forfeited to the use of the said United States, according to the form of the statute of the said United States in such cases made and provided.

(Signed) M. D. BALL,
United States District Attorney for the District of Alaska.

ANNEX C.

The following table shows the names of the British sealing vessels seized or warned by United States revenue cruisers, 1886-1890, and the approximate distance from land when seized. The ... ...es assigned in the cases of the *Carolena*, *Thornton*, and *Onward* are on the authority of United States Naval Commander Abbey. (See Fiftieth Congress, second session, Senate Executive Document No. 106, pp. 20, 30, 40.) The distances assigned in the cases of the *Anna Beck*, *W. P. Sayward*, *Dolphin*, and *Grace* are on the authority of Captain Shepard, U. S. R. M. (*Blue Book*, United States, No. 2, 1890, pp. 80-82. See Appendix, Vol. III):

Name of vessel.	Date of seizure.	Approximate distance from land when seized.	United States vessel making seizure.
Carolena	Aug. 1, 1886	75 miles	Corwin.
Thornton	Aug. 1, 1886	70 miles	Corwin.
Onward	Aug. 2, 1886	115 miles	Corwin.
Favourite	Aug. 2, 1886	Warned by Corwin in about same position as Onward.	
Anna Beck	July 2, 1887	66 miles	Rush.
W. P. Sayward	July 9, 1887	59 miles	Rush.
Dolphin	July 12, 1887	40 miles	Rush.
Grace	July 17, 1887	96 miles	Rush.
Alfred Adams	Aug. 10, 1887	62 miles	Rush.
Ada	Aug. 25, 1887	15 miles	Bear.
Triumph	Aug. 4, 1887	Warned by Rush not to enter Bering Sea.	
Juanita	July 31, 1889	66 miles	Rush.
Pathfinder	July 29, 1889	50 miles	Rush.
Triumph	July 11, 1889	Ordered out of Bering Sea by Rush. (1) As to position when warned.	
Black Diamond	July 11, 1889	35 miles	Rush.
Lily	Aug. 6, 1889	66 miles	Rush.
Ariel	July 30, 1889	Ordered out of Bering Sea by Rush.	
Kate	Aug. 13, 1889	.... Ditto.	
Minnie	July 15, 1889	65 miles	Rush.
Pathfinder	Mar. 27, 1890	Seized in Neah Bay (1)	Corwin.

(1) Neah Bay is in the State of Washington, and the *Pathfinder* was seized there on charges made against her in the Bering Sea in the previous year. She was released two days later.

And whereas the Government of Her Britannic Majesty did ask the said Arbitrators to find the said facts as set forth in the said statement, and whereas the Agent and Counsel for the United States Government thereupon in our presence informed us that the said statement of facts was sustained by the evidence, and that they had agreed with the Agent and Counsel for Her Britannic Majesty that We, the Arbitrators, if we should think fit so to do, might find the said statement of facts to be true.

Now, We, the said Arbitrators, do unanimously find the facts as set forth in the said statement to be true.

And whereas each and every question which has been considered by the Tribunal has been determined by a majority of all the Arbitrators;

Now, We, Baron de Courcel, Lord Hannen, Mr. Justice Harlan, Sir John Thompson, Senator Morgan, the Marquis Visconti Venosta, and Mr. Gregers Gram, the respective minorities not withdrawing their votes, do declare this to be the final Decision and Award in writing of this Tribunal in accordance with the Treaty.

Made in duplicate at Paris and signed by us the fifteenth day of August, in the year 1893.

And We do certify this English Version thereof to be true and accurate.

ALPH. DE COURCEL.
JOHN M. HARLAN.
JOHN T. MORGAN.
HANNEN.
JNO. S. D. THOMPSON.
VISCONTI VENOSTA.
G. GRAM.

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Statement of Mr. Peirce, the delegate for the United States during the arbitration of the whaling and sealing claim of the United States against Russia held at The Hague in 1902, made on July 4, 1902 (Foreign Relations of the United States 1902, Appendix I, 440).

> In the first session the arbitrator asked me, "What is the extent of jurisdiction which the United States claim today in Bering Sea?" and I replied that the American Government now claims an extent of 3 miles. I wished that this reply might be sustained by the Secretary of State, Mr. John Hay. I am now in receipt of a dispatch, and in accordance with the authority which I have received from the Secretary of State of the United States, dated July 3, 1902, I repeat that the Government of the United States claims, neither in Bering Sea nor in its other bordering waters, an extent of jurisdiction greater than a marine league from its shores, but bases its claims to jurisdiction upon the following principle: The Government of the United States claims and admits the jurisdiction of any State over its territorial waters only to the extent of a marine league, unless a different rule is fixed by treaty between two States; even then the treaty States alone are affected by the agreement.

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List 62.

(VIII Aleutian Island, Alaska)

Executive Order

WHEREAS it has become apparent that certain valuable fisheries of Alaska have been seriously impaired and are in danger of further depletion, and that it is necessary to establish authority to meet the exigency which has arisen for the protection of these fisheries, and

WHEREAS by Executive Order issued under date of March 3, 1913, modified by an order of August 11, 1916, a reservation known as the Aleutian Islands Reservation was created, and by an Executive Order under date of February 17, 1922, a reservation known as the Alaska Peninsula Fisheries Reservation was created, including therein the lands and the territorial waters of the United States contiguous to the lands covered by said Executive Orders,

NOW, THEREFORE, I, WARREN G. HARDING, President of the United States of America, by virtue of the power in me vested by the laws of the United States, do hereby set apart as a preserve to more effectively insure the protection of the fisheries and for their encouragement and development, in addition to the above reservations, a reserve of lands and waters, which said reservation shall be known as the Southwestern Alaska Fisheries Reservation, which shall include all territorial waters, and the lands within one-half mile of the shores thereof, within the lines defined as follows:

From the northeasterly point of the Alaska Peninsula Fisheries Reservation at Cape Menshikof, Bristol Bay, northwesterly to a point in latitude 58° 32′ north, longitude 162° 12′ west, off Cape Newenham; thence to a point in latitude 59° 15′ north, longitude 162° 0′ west; thence eastward along parallel of latitude 59° 15′ north, to longitude 155° west; thence to a point in latitude 61° 20′ north, longitude 151° 20′ west; thence to a point in latitude 61° 20′ north, longitude 150° 10′ west; thence to a point in latitude 61° 35′ north, longitude 149° 40′ west; thence to a point in latitude 61° 35′ north, longitude 149° 0′ west; thence to a point in latitude 60° 40′ north, longitude 149° 0′ west; thence to a point in latitude 60° 40′ north, longitude 151° 0′ west; thence to a point in latitude 57° 30′ north, longitude 151° west; thence to a point in latitude 55° 0′ north, longitude 157° 0′ west; thence to low water mark at the eastern extremity of Foggy Cape on Sutwik Island; thence to point of beginning.

Fishery operations within the said Southwestern Alaska Fisheries Reservation shall be subject to such regulations and restrictions as shall be issued by the Secretary of Commerce, in addition to the general fisheries laws and regulations of the United States as administered by the Secretary of Commerce.

The reservation hereby established shall not interfere with the use of the waters, islands, or other lands embraced therein for any purpose not inconsistent therewith, nor with the operation therein of the laws now or hereafter applicable to the public lands in Alaska, nor with the respective jurisdictions of the Secretary of Agriculture and the Secretary of the Interior thereover.

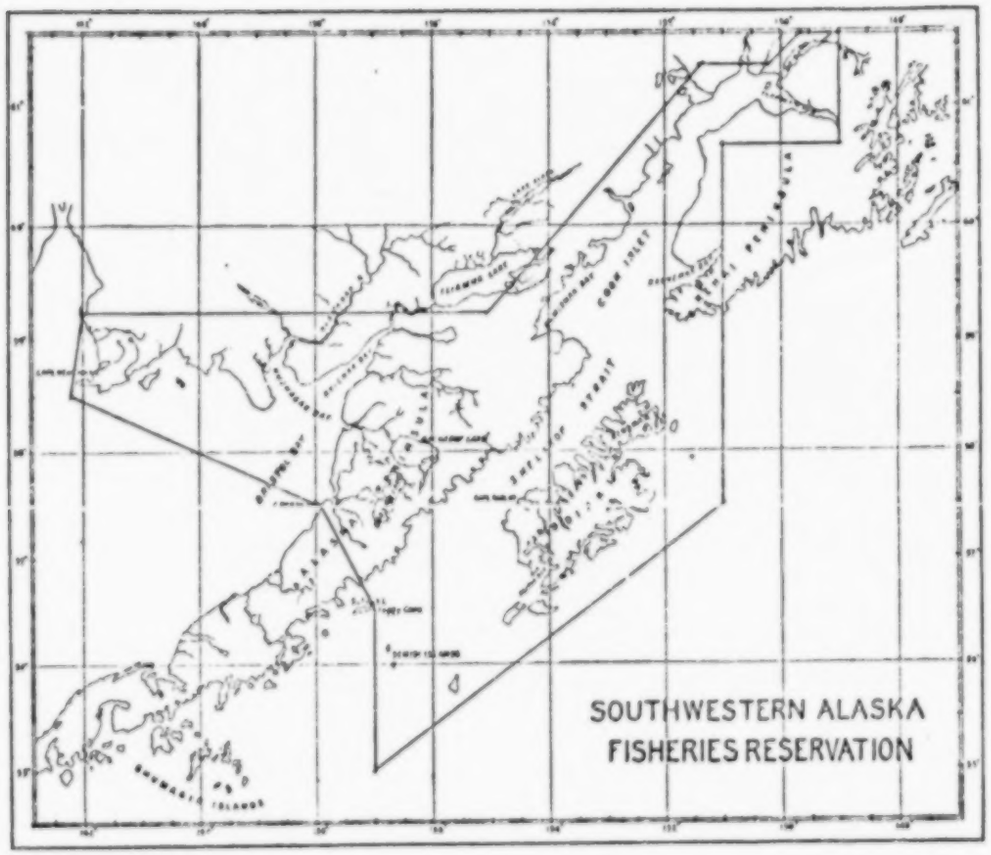
Warning is hereby expressly given to all unauthorized persons not to fish in or use any of the waters herein described or mentioned.

WARREN G HARDING

THE WHITE HOUSE,
November 3, 1923.

[No. 3752.]

(This order revoked by 4021, 4029 revokes 3630a, 4076 partially revokes 1733 & 4251 revokes 1733, 5000 revokes 1733 & 1733 is amended by 5057)



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REGULATIONS FOR THE ADMINISTRATION OF THE SOUTHWESTERN ALASKA FISHERIES RESERVATION.

Under date of November 3, 1922, the following Executive order was promulgated:

Whereas it has become apparent that certain valuable fisheries of Alaska have been seriously impaired and are in danger of further depletion, and that it is necessary to establish authority to meet the exigency which has arisen for the protection of these fisheries, and

Whereas by Executive order issued under date of March 3, 1913, modified by an order of August 11, 1916, a reservation known as the Aleutian Islands Reservation was created, and by an Executive order under date of February 17, 1922, a reservation known as the Alaska Peninsula Fisheries Reservation was created, including therein the lands and the territorial waters of the United States contiguous to the lands covered by said Executive orders,

Now, therefore, I, Warren G. Harding, President of the United States of America, by virtue of the power in me vested by the laws of the United States, do hereby set apart as a preserve to more effectively insure the protection of the fisheries and for their encouragement and development, in addition to the above reservations, a reserve of lands and waters, which said reservation shall be known as the Southwestern Alaska Fisheries Reservation, which shall include all territorial waters, and the lands within one-half mile of the shores thereof, within the lines defined as follows:

From the northeasterly point of the Alaska Peninsula Fisheries Reservation at Cape Menshikof, Bristol Bay, northwesterly to a point in latitude 58° 32′ north, longitude 162° 12′ west, off Cape Newenham; thence to a point in latitude 59° 15′ north, longitude 162° 0′ west; thence eastward along parallel of latitude 59° 15′ north, to longitude 155° west; thence to a point in latitude 61° 20′ north, longitude 151° 20′ west; thence to a point in latitude 61° 20′ north, longitude 150° 10′ west; thence to a point in latitude 61° 35′ north, longitude 149° 40′ west; thence to a point in latitude 61° 35′ north, longitude 147° 0′ west; thence to a point in latitude 60° 40′ north, longitude 147° 0′ west; thence to a point in latitude 60° 40′ north, longitude 151° 0′ west; thence to a point in latitude 57° 30′ north, longitude 151° west; thence to a point in latitude 57° 0′ north, longitude 157° 0′ west; thence to low-water mark at the eastern extremity of Foggy Cape on Sutwik Island; thence to point of beginning.

Fishery operations within the said Southwestern Alaska Fisheries Reservation shall be subject to such regulations and restrictions as shall be issued by the Secretary of Commerce, in addition to the general fisheries laws and regulations of the United States as administered by the Secretary of Commerce.

The reservation hereby established shall not interfere with the use of the waters, islands, or other lands embraced therein for any purpose not inconsistent therewith, nor with the operation therein of the laws now or hereafter applicable to the public lands in Alaska, nor with the respective jurisdictions of the Secretary of Agriculture and the Secretary of the Interior thereover.

Warning is hereby expressly given to all unauthorized persons not to fish in or use any of the waters herein described or mentioned.

By virtue of the authority conferred by the above order, the following regulations were promulgated under date of December 16, 1922:

1. For purposes of administration the following districts and zones are established.

(a) *Bristol Bay district.*—All that portion of the reservation lying within the Bering Sea, the coast line extending from Cape Menshikof to Cape Newenham and thence northward to 59° 15′ north latitude.

Zone 1. Including all the Ugashik fishing grounds which lie northerly and westerly from Cape Menshikof and are included between the boundary of the reservation and the fifty-eighth parallel of north latitude east of the one hundred fifty-ninth meridian.

Zone 2. All that portion of Bristol Bay north of the fifty-eighth parallel of north latitude and east of the one hundred fifty-ninth meridian; including the Egegik, Naknek, Kvichak, and Nushagak fishing areas.

Zone 3. All waters of the Bering Sea included in the reservation, but not included in zones 1 and 2.

(b) *Cook Inlet district.*—Embracing all that portion of the reservation east of Bristol Bay and north of the latitude of Cape Douglas (approximately 58° 50′); including the Barren Islands, the shores and outlying islands of the Kenai Peninsula, and all the shores and waters of Cook Inlet.

(c) *Kodiak-Afognak district.*—All that portion of the reservation south and east of the Alaska Peninsula and south of the latitude of Cape Douglas, including the Kodiak-Afognak group of islands, the Trinity and the Semidi groups, Chirikof Island, Shelikof Strait, and all the mainland shores from Cape Douglas to the southwestern boundary of the reservation.

Zone 1. Extends on Kodiak Island from Low Cape to Cape Ugat, and on the mainland coast from the latitude of Cape Ugat to the western limit of the reservation. Includes Red and Karluk Rivers and Uyak Bay.

Zone 2. Extends from Low Cape on the western coast of Kodiak Island to, but not including, Three Saints Bay on the southeastern coast, and includes Alitak and Olga Bays, and Chirikof, Trinity, and Semidi Islands.

Zone 3. Embraces all that portion of the district not included in zones 1 and 2. Includes the western shores of Kodiak and Afognak Islands north of the latitude of Cape Ugat and the northern and eastern shores as far south as Three Saints Bay. It also includes Shelikof Strait and the mainland shores north of the latitude of Cape Ugat.

Regulations of the Department of Commerce promulgated under date of December 16, 1922, pursuant to Executive Order No. 3752, Establishing the Southwestern Alaska Fisheries Reservation, November 3, 1922, Department of Commerce Circular No. 251 (9th ed., January 9, 1923) p. 8.

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2. No individual shall engage in the business of catching, canning, or preparing salmon, except for personal or family use and not for sale or barter, within the above-stated districts without first securing a permit from the Secretary of Commerce. Applications for annual permits shall be made on or before January 15, 1923, and on or before December 15 of each year thereafter, to the Secretary of Commerce, Washington, D. C., and shall give full information on the following points:

(a) Name and permanent address of person or corporation desiring permit.

(b) Character of business proposed, whether fishing, canning, salting, or otherwise curing fish.

(c) Location and capacity of plant (number of lines of machinery in cannery and whether for pound or half-pound cans).

(d) Number and kind of each class of fishing gear desired, and location where same is to be operated.

(e) Number of cases of salmon to be packed (based upon 48 one-pound cans per case), or number of barrels of salmon to be salted, or tierces of salmon to be mild cured.

(f) If application is for continuance of operations formerly conducted, the catch and pack of salmon by species and the amount of each class of gear operated in the next preceding season must be shown.

(g) Affidavit as to correctness of facts set forth in the application must be made by competent authority.

3. Permits shall specify the amount of pack allowed, if that be limited, and the character, extent, and locality of fishing operations to be conducted.

4. The use of purse seines in fishing for salmon will not be permitted within the reservation.

5. Fox farmers may take and prepare salmon for fox feed in all legal ways, but must secure permits from the Secretary of Commerce.

6. Transportation of fresh salmon for canning, salting, or otherwise preserving will not be permitted between any two districts or zones within the reservation, or between any district or zone within the reservation and any outside district.

7. Throughout the Cook Inlet and the Kodiak-Afognak districts the pack of each plant shall be made exclusively from the proceeds of the fishing gear specifically allotted to it. Transfer of salmon from one plant to another will not be permitted.

8. Nothing in these regulations shall prevent the purchase of salmon from natives, local inhabitants, or other individuals who have secured permits to fish within areas properly tributary to the cannery, but fish so purchased shall not be in excess of the pack limit which may be allotted.

9. No fishing for salmon shall be permitted in Chinik Inlet, Kamishak Bay, within a line which joins the outer headlands of the inlet and passes outside the two small islands which lie near its entrance. Markers shall be placed on the headlands to designate the closed areas.

10. In the Bristol Bay district the following regulations shall be in effect.

(a) In zone 2 it is permitted that fishing boats discharge their catch wherever convenient, but lighters or other collecting boats shall not transport salmon from the Nushagak fishing grounds to the canneries along the east shore, nor from the Egegik-Naknek-Kvichak fishing grounds to the Nushagak canneries. For the purposes of this regulation the fishing grounds off Cape Etolin shall be considered as belonging to the Nushagak River.

(b) Fishing for salmon for commercial purposes shall be conducted solely by the use of drift gill nets, except that traps operated in the season of 1922 in the Nushagak region may continue to operate during the season of 1923. In 1924 and in subsequent years no traps shall be driven or operated in the Bristol Bay district.

(c) King salmon nets shall have a mesh not less than 8½ inches knit measure, and red salmon nets, after the season of 1923, a mesh not less than 5½ inches stretched measure between knots. For the season of 1923 only, red salmon nets will be permitted with mesh as small as 5¼ inches, measured as above.

(d) Companies operating motor gill-net fishing boats during the season of 1922 may continue their use in 1923, but the use of motor fishing boats will not be permitted in the Bristol Bay district after the season of 1923.

(e) Each fishing boat may be provided with gill nets not to exceed in length 200 fathoms hung measure.

(f) Fishing for red salmon shall not begin prior to midnight of June 25 and shall close at or before midnight of July 25 of each year; but each cannery may operate one commissary net at any time to supply fresh salmon for the mess. Salmon traps shall not be operated prior to midnight of June 25.

(g) Fishing for king salmon with drift gill nets having a mesh not less than 8½ inches knit measure is permitted prior to June 26, as well as after that date; but the total length of gill nets employed by any fishing boat at one time shall not exceed 200 fathoms.

11. These regulations shall be subject to such annual revision by the Secretary of Commerce as may appear advisable in view of the investigation and the experience of the preceding season. They shall be in full force and effect immediately from and after date of issue.

HERBERT HOOVER,
Secretary of Commerce.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1923

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LAWS AND REGULATIONS FOR PROTECTION OF FISHERIES OF ALASKA

DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
WASHINGTON

DEPARTMENT CIRCULAR NO. 251
TENTH EDITION[1]

BUREAU OF FISHERIES
ALASKA FISHERIES SERVICE

June 21, 1924.

TO WHOM IT MAY CONCERN:

Attention is directed to the following acts for the protection and regulation of the fisheries of Alaska, approved June 14, 1906, June 26, 1906, and June 6, 1924, together with the fisheries regulations and orders of the Department which are now effective. Persons engaged in the Alaska fisheries and officers of the Department charged with the supervision of the fisheries of Alaska should familiarize themselves with their provisions.

AN ACT FOR THE PROTECTION OF THE FISHERIES OF ALASKA, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of protecting and conserving the fisheries of the United States in all waters of Alaska the Secretary of Commerce from time to time may set apart and reserve fishing areas in any of the waters of Alaska over which the United States has jurisdiction, and within such areas may establish closed seasons during which fishing may be limited or prohibited as he may prescribe. Under this authority to limit fishing in any area so set apart and reserved the Secretary may (a) fix the size and character of nets, boats, traps, or other gear and appliances to be used therein; (b) limit the catch of fish to be taken from any area; (c) make such regulations as to time, means, methods, and extent of fishing as he may deem advisable. From and after the creation of any such fishing area and during the time fishing is prohibited therein it shall be unlawful to fish therein or to operate therein any boat, seine, trap, or other gear or apparatus for the purpose of taking fish; and from and after the creation of any such fishing area in which limited fishing is permitted such fishing shall be carried on only during the time, in the manner, to the extent, and in conformity with such rules and regulations as the Secretary prescribes under the authority herein given: *Provided*, That every such regulation made by the Secretary of Commerce shall be of general application within the particular area to which it applies, and that no exclusive or several right of fishery shall be granted therein, nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of Commerce. The right herein given to establish fishing areas and to permit limited fishing therein shall not apply to any creek, stream, river, or other bodies of water in which fishing is prohibited by specific provisions of this Act, but the Secretary of Commerce through the creation of such areas and the establishment of closed seasons may further extend the restrictions and limitations imposed upon fishing by specific provisions of this or any other Act of Congress.

It shall be unlawful to import or bring into the Territory of Alaska, for purposes other than personal use and not for sale or barter, salmon from waters outside the jurisdiction of the United States taken during any closed period provided for by this Act or regulations made thereunder.

SEC. 2. In all creeks, streams, or rivers, or in any other bodies of water in Alaska, over which the United States has jurisdiction, in which salmon run, and in which now or hereafter there exist racks, gateways, or other means by which the number in a run may be counted or estimated with substantial accuracy, there shall be allowed an escapement of not less than 50 per centum of the total number thereof. In such waters the taking of more than 50 per centum of the run of such fish is hereby prohibited. It is hereby declared to be the intent and policy of Congress that in all waters of Alaska in which salmon run there shall be an escapement of not less than 50 per centum thereof, and if in any year it shall appear to the Secretary of Commerce that the run of fish in any waters has diminished, or is diminishing, there shall be required a correspondingly increased escapement of fish therefrom.

[1] The tenth edition of this circular supersedes all previous editions.

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SEC. 3. Section 3 of the Act of Congress entitled "An Act for the protection and regulation of the fisheries of Alaska," approved June 26, 1906, is amended to read as follows:

"SEC. 3. That it shall be unlawful to erect or maintain any dam, barricade, fence, trap, fish wheel, or other fixed or stationary obstruction, except for purposes of fish culture, in any of the waters of Alaska at any point where the distance from shore to shore is less than one thousand feet, or within five hundred yards of the mouth of any creek, stream, or river into which salmon run, excepting the Karluk and Ugashik Rivers, with the purpose or result of capturing salmon or preventing or impeding their ascent to the spawning grounds, and the Secretary of Commerce is hereby authorized and directed to have any and all such unlawful obstructions removed or destroyed. For the purposes of this section, the mouth of such creek, stream, or river shall be taken to be the point determined as such mouth by the Secretary of Commerce and marked in accordance with this determination. It shall be unlawful to lay or set any seine or net of any kind within one hundred yards of any other seine, net, or other fishing appliance which is being or which has been laid or set in any of the waters of Alaska, or to drive or to construct any trap or any other fixed fishing appliance within six hundred yards laterally or within one hundred yards endwise of any other trap or fixed fishing appliance."

SEC. 4. Section 4 of said Act of Congress approved June 26, 1906, is amended to read as follows:

"SEC. 4. That it shall be unlawful to fish for, take, or kill any salmon of any species or by any means except by hand rod, spear, or gaff in any of the creeks, streams, or rivers of Alaska; or within five hundred yards of the mouth of any such creek, stream, or river over which the United States has jurisdiction, excepting the Karluk and Ugashik Rivers: *Provided*, That nothing contained herein shall prevent the taking of fish for local food requirements or for use as dog feed."

SEC. 5. Section 5 of said Act of Congress approved June 26, 1906, is amended to read as follows:

"SEC. 5. That it shall be unlawful to fish for, take, or kill any salmon of any species in any manner or by any means except by hand rod, spear, or gaff for personal use and not for sale or barter in any of the waters of Alaska over which the United States has jurisdiction from six o'clock postmeridian of Saturday of each week until six o'clock antemeridian of the Monday following, or during such further closed time as may be declared by authority now or hereafter conferred, but such authority shall not be exercised to prohibit the taking of fish for local food requirements or for use as dog feed. Whenever the Secretary of Commerce shall find that conditions in any fishing area make such action advisable, he may advance twelve hours both the opening and ending time of the minimum thirty-six-hour closed period herein stipulated. Throughout the weekly closed season herein prescribed the gate, mouth, or tunnel of all stationary and floating traps shall be closed, and twenty-five feet of the webbing or net of the 'heart' of such traps on each side next to the 'pot' shall be lifted or lowered in such manner as to permit the free passage of salmon and other fishes."

SEC. 6. Any person, company, corporation, or association violating any provision of this Act or of said Act of Congress approved June 26, 1906, or of any regulation made under the authority of either, shall, upon conviction thereof, be punished by a fine not exceeding $5,000 or imprisonment for a term of not more than ninety days in the county jail, or by both such fine and imprisonment; and in case of the violation of section 3 of said Act approved June 26, 1906, as amended, there may be imposed a further fine not exceeding $250 for each day the obstruction therein declared unlawful is maintained. Every boat, seine, net, trap, and every other gear and appliance used or employed in violation of this Act or in violation of said Act approved June 26, 1906, and all fish taken therein or therewith, shall be forfeited to the United States, and shall be seized and sold under the direction of the court in which the forfeiture is declared, at public auction, and the proceeds thereof, after deducting the expenses of sale, shall be disposed of as other fines and forfeitures under the laws relating to Alaska. Proceedings for such forfeiture shall be in rem under the rules of admiralty.

That for the purposes of this Act all employees of the Bureau of Fisheries, designated by the Commissioner of Fisheries, shall be considered as peace officers and shall have the same powers of arrest of persons and seizure of property for any violation of this Act as have United States marshals or their deputies.

SEC. 7. Sections 6 and 13 of said Act of Congress approved June 26, 1906, are hereby repealed. Such repeal, however, shall not affect any act done or any right accrued or any suit or proceeding had or commenced in any civil cause prior to said repeal, but all liabilities under said laws shall continue and may be enforced in the same manner as if committed, and all penalties, forfeitures, or liabilities incurred prior to taking effect hereof, under any law embraced in, changed, modified, or repealed by this Act, may be prosecuted and punished in the same manner and with the same effect as if this Act had not been passed.

SEC. 8. Nothing in this Act contained, nor any powers herein conferred upon the Secretary of Commerce, shall abrogate or curtail the powers granted the Territorial Legislature of Alaska to impose taxes or licenses, nor limit or curtail any powers granted the Territorial Legislature of Alaska by the Act of Congress approved August 24, 1912, "To create a legislative assembly in the Territory of Alaska, to confer legislative power thereon, and for other purposes."

Approved, June 6, 1924.

The following sections of an act for the protection and regulation of the fisheries of Alaska, approved June 26, 1906, are still in effect.

AN ACT FOR THE PROTECTION AND REGULATION OF THE FISHERIES OF ALASKA[1]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person, company, or corporation carrying on the business of canning, curing, or preserving fish or manufacturing fish products within the territory known as Alaska, ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, or in any of the waters of Alaska over which the United States has jurisdiction, shall, in lieu of all other license fees and taxes therefor and thereon, pay license taxes on their said business and output as follows: Canned salmon, four cents per case; pickled salmon, ten cents per barrel; salt salmon in bulk, five cents per one hundred pounds; fish oil, ten cents per barrel; fertilizer, twenty cents per ton. The payment and collection of such license taxes shall be under and in accordance with the provisions of the Act of March third, eighteen hundred and ninety-nine, entitled "An Act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for the district," and amendments thereto.

SEC. 2. That the catch and pack of salmon made in Alaska by the owners of private salmon hatcheries operated in Alaska shall be exempt from all license fees and taxation of every nature at the rate of ten cases of canned salmon to every one thousand red or king salmon fry liberated, upon the following conditions:

That the Secretary of Commerce may from time to time, and on the application of the hatchery owner shall, within a reasonable time thereafter, cause such private hatcheries to be inspected for the purpose of determining the character of their operations, efficiency, and productiveness, and if he approve the same shall cause notice of such approval to be filed in the office of the clerk or deputy clerk of the United States district court of the division of the district of Alaska wherein any such hatchery is located, and shall also notify the owners of such hatchery of the action taken by him. The owner, agent, officer, or superintendent of any hatchery the effectiveness and productiveness of which has been approved as above provided shall, between the thirtieth day of June and the thirty-first day of December of each year, make proof of the number of salmon fry liberated during the twelve months immediately preceding the thirtieth day of June, by a written statement under oath. Such proof shall be filed in the office of the clerk or deputy clerk of the United States district court of the division of the district of Alaska wherein such hatchery is located, and when so filed shall entitle the respective hatchery owners to the exemption as herein provided; and a false oath as to the number of salmon fry liberated shall be deemed perjury and subject the offender to all the pains and penalties thereof. Duplicates of such statements shall also be filed with the Secretary of Commerce. It shall be the duty of such clerk or deputy clerk in whose office the approval and proof heretofore provided for are filed to forthwith issue to the hatchery owner, causing such proofs to be filed, certificates which shall not be transferable and of such denominations as said owner may request (no certificate to cover fewer than one thousand fry), covering in the aggregate the number of fry so proved to have been liberated; and such certificates may be used at any time by the person, company, corporation, or association to whom issued for the payment pro tanto of any license fees or taxes upon or against or on account of any catch or pack of salmon made by them in Alaska; and it shall be the duty of all public officials charged with the duty of collecting or receiving such license fees or taxes to accept such certificates in lieu of money in payment of all license fees or taxes upon or against the pack of canned salmon at the ratio of one thousand fry for each ten cases of salmon. No hatchery owner shall obtain the rebates from the output of any hatchery to which he might otherwise be entitled under this Act unless the efficiency of said hatchery has first been approved by the Secretary of Commerce in the manner herein provided for.

* * * * * * * * *

SEC. 7. That it shall be unlawful to can or salt for sale for food any salmon more than forty-eight hours after it has been killed.

SEC. 8. That it shall be unlawful for any person, company, or corporation wantonly to waste or destroy salmon or other food fishes taken or caught in any of the waters of Alaska.

SEC. 9. That it shall be unlawful for any person, company, or corporation canning, salting, or curing fish of any species in Alaska to use any label, brand, or trade-mark which shall tend to misrepresent the contents of any package of fish offered for sale: *Provided*, That the use of the terms "red," "medium red," "pink," "chum," and so forth, as applied to the various species of Pacific salmon under present trade usages shall not be deemed in conflict with the provisions of this Act when used to designate salmon of those known species.

[1] "Department of Commerce and Labor" and "Secretary of Commerce and Labor," wherever they occur in this act, have been changed, respectively, to "Department of Commerce" and "Secretary of Commerce," in accordance with the act of Mar. 6, 1913, creating the Department of Labor

SEC. 10. That every person, company, and corporation engaged in catching, curing, or in any manner utilizing fishery products, or in operating fish hatcheries in Alaska, shall make detailed annual reports thereof to the Secretary of Commerce, on blanks furnished by him, covering all such facts as may be required with respect thereto for the information of the Department. Such reports shall be sworn to by the superintendent, manager, or other person having knowledge of the facts, a separate blank form being used for each establishment in cases where more than one cannery, saltery, or other establishment is conducted by a person, company, or corporation, and the same shall be forwarded to the Department at the close of the fishing season and not later than December fifteenth of each year.

SEC. 11. That the catching or killing, except with rod, spear, or gaff, of any fish of any kind or species whatsoever in any of the waters of Alaska over which the United States has jurisdiction, shall be subject to the provisions of this Act, and the Secretary of Commerce is hereby authorized to make and establish such rules and regulations not inconsistent with law as may be necessary to carry into effect the provisions of this Act.

SEC. 12. That to enforce the provisions of this Act and such regulations as he may establish in pursuance thereof, the Secretary of Commerce is authorized and directed to depute, in addition to the agent and assistant agent of salmon fisheries now provided by law, from the officers and employees of the Department of Commerce, a force adequate to the performance of all work required for the proper investigation, inspection, and regulation of the Alaskan fisheries and hatcheries, and he shall annually submit to Congress estimates to cover the cost of the establishment and maintenance of fish hatcheries in Alaska, the salaries and actual traveling expenses of such officials, and for such other expenditures as may be necessary to carry out the provisions of this Act.

* * * * * * * * *

SEC. 14. That the violation of any provision of this Act may be prosecuted in any district court of Alaska or any district court of the United States in the States of California, Oregon, or Washington. And it shall be the duty of the Secretary of Commerce to enforce the provisions of this Act and the rules and regulations made thereunder. And it shall be the duty of the district attorney to whom any violation is reported by any agent or representative of the Department of Commerce to institute proceedings necessary to carry out the provisions of this Act.

SEC. 15. That all Acts or parts of Acts inconsistent with the provisions of this Act are, so far as inconsistent, hereby repealed.

SEC. 16. That this Act shall take effect and be in force from and after its passage.

Approved, June 26, 1906.

AN ACT TO PROHIBIT ALIENS FROM FISHING IN THE WATERS OF ALASKA[1]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person not a citizen of the United States, or who has declared his intention to become a citizen of the United States, and is not a bona fide resident therein, or for any company, corporation, or association not organized or authorized to transact business under the laws of the United States or under the laws of any State, Territory, or district thereof, or for any person not a native of Alaska, to catch or kill, or attempt to catch or kill, except with rod, spear, or gaff, any fish of any kind or species whatsoever in any of the waters of Alaska under the jurisdiction of the United States: *Provided, however,* That nothing contained in this Act shall prevent those lawfully taking fish in the said waters from selling the same, fresh or cured, in Alaska or in Alaskan waters, to any alien person, company, or vessel then being lawfully in said waters: *And provided further,* That nothing contained in this Act shall prevent any person, firm, corporation, or association lawfully entitled to fish in the waters of Alaska from employing as laborers any aliens who can now be lawfully employed under the existing laws of the United States, either at stated wages or by piecework, or both, in connection with Alaskan fisheries, or with the canning, salting or otherwise preserving of fish.

SEC. 2. That every person, company, corporation, or association found guilty of a violation of any provision of this Act or of any regulation made thereunder shall, for each offense, be fined not less than one hundred dollars nor more than five hundred dollars, which fine shall be a lien against any vessel or other property of the offending party or which was used in the commission of such unlawful act. Every vessel used or employed in violation of any provision of this Act or of any regulation made thereunder shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars, and may be seized and proceeded against by way of libel in any court having jurisdiction of the offense.

[1] "Department of Commerce and Labor" and "Secretary of Commerce and Labor," wherever they occur in this act, have been changed, respectively, to "Department of Commerce" and "Secretary of Commerce," in accordance with the act of Mar. 6, 1913, creating the Department of Labor.

SEC. 3. That the violation of any provision of this Act or of any regulation made thereunder may be prosecuted in any United States district court of Alaska, California, Oregon, or Washington.

SEC. 4. That the collector of customs of the district of Alaska is hereby authorized to search and seize every foreign vessel and arrest every person violating any provision of this Act or any regulation made thereunder, and the Secretary of Commerce shall have power to authorize officers of the Navy and of the Revenue Cutter Service and agents of the Department of Commerce to likewise make such searches, seizures, and arrests. If any foreign vessel shall be found within the waters to which this Act applies, having on board fresh or cured fish and apparatus or implements suitable for killing or taking fish, it shall be presumed that the vessel and apparatus were used in violation of this Act until it is otherwise sufficiently proved. And every vessel, its tackle, apparatus, or implements so seized shall be given into the custody of the United States marshal of either of the districts mentioned in section three of this Act, and shall be held by him subject to the proceedings provided for in section two of this Act. The facts in connection with such seizures shall be at once reported to the United States district attorney for the district to which the vessel so seized shall be taken, whose duty it shall be to institute the proper proceedings.

SEC. 5. That the Secretary of Commerce shall have power to make rules and regulations not inconsistent with law to carry into effect the provisions of this Act. And it shall be the duty of the Secretary of Commerce to enforce the provisions of this Act and the rules and regulations made thereunder, and for that purpose he may employ, through the Secretary of the Treasury and the Secretary of the Navy, the vessels of the United States Revenue-Cutter Service and of the Navy: *Provided, however*, That nothing contained in this Act shall be construed as affecting any existing treaty or convention between the United States and any foreign power.

Approved, June 14, 1906.

YES BAY RESERVATION

An Executive order of February 1, 1906, is as follows:

It is hereby ordered that the hereinafter described land and water areas in the District of Alaska be, and they are hereby, reserved and set apart as a site for a salmon hatchery, subject to the possessory rights of the natives and of persons claiming title through the Russian Government, also subject to the rights of natives to take fish from the waters and fuel from the forests included in the limits of the reservation hereby established to wit:

Yes Lake (otherwise known as Lake McDonald) and its catchment basin, its outlet, and a strip of land one-eighth of a mile wide along each shore thereof; Yes Bay, Back Bay, and a strip of land one-eighth of a mile wide along the shores thereof and a strip of land one-eighth of a mile wide on each side of the old Indian trail.

ANNETTE ISLAND FISHERY RESERVE

Section 15 of the act of March 3, 1891, is as follows:

That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in Southeastern Alaska, on the north side of Dixon's Entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakatla Indians, and those people known as Metlakatlans who have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior.

On April 28, 1916, the President issued a proclamation creating the Annette Island Fishery Reserve. The proclamation provides that—

The waters within three thousand feet from the shore lines at mean low tide of Annette Island, Ham Island Walker Island, Lewis Island, Spire Island, Hemlock Island, and adjacent rocks and islets, * * * also the bays of said islands, rocks, and islets, are hereby reserved for the benefit of the Metlakatlans and such other Alaskan natives as have joined them or may join them in residence on these islands, to be used by them under the general fisheries laws and regulations of the United States as administered by the Secretary of Commerce.

AFOGNAK RESERVATION

A proclamation by the President of the United States, promulgated December 24, 1892, created the Afognak Forest and Fish Culture Reserve, which is now a part of the Chugach National Forest. The proclamation states that—

There is hereby reserved from occupation and sale, and set apart as a public reservation, including use for fish-culture stations, said Afognak Island, Alaska, and its adjacent bays and rocks and territorial waters, including among others the Sea Lion Rocks, and Sea Otter Island: *Provided*, That this proclamation shall not be so construed as to deprive any bona fide inhabitant of said island of any valid right he may possess under the treaty for the cession of the Russian possessions in North America to the United States, concluded at Washington on the thirtieth day of March, eighteen hundred and sixty-seven.

Warning is hereby expressly given to all persons not to enter upon, or to occupy, the tract or tracts of land or waters reserved by this proclamation, or to fish in, or use any of the waters herein described or mentioned.

ALEUTIAN ISLANDS RESERVATION

By Executive order of March 3, 1913, the Aleutian Islands Reservation consisting of "all islands of the Aleutian chain, Alaska, including Unimak and Sannak Islands on the east, and extending to and including Attu Island on the west," was created and set apart for various purposes, including the encouragement and development of the fisheries.

This reservation was placed under the joint jurisdiction of the Department of Commerce and the Department of Agriculture, and among the matters committed exclusively to the Department of Commerce was jurisdiction over the fisheries. Joint regulations for the administration of the reservation were promulgated April 30, 1921, by the two departments concerned.

These regulations in respect to the fisheries are hereby revoked. The Executive order of March 3, 1913, creating the Aleutian Islands Reservation is still in full force and effect, as specifically stated in the Executive orders of June 7, 1924, which revoked the Executive orders of February 17, 1922, and November 3, 1922, creating the Alaska Peninsula Fisheries Reservation and the Southwestern Alaska Fisheries Reservation, respectively.

REGULATIONS

By virtue of the authority vested in the Secretary of Commerce, fishing areas are hereby set apart and regulations governing fishing therein are made immediately effective, as follows:

I. BRISTOL BAY AREA

The Bristol Bay area is hereby defined to include all territorial coastal and tributary waters of Alaska extending from Cape Menshikof to Cape Newenham.

1. Commercial fishing for salmon shall be conducted solely by drift gill nets. The use of salmon traps, beach seines, and purse seines is prohibited.

2. The total length of gill nets on any salmon fishing boat shall not exceed 200 fathoms hung measure.

3. King salmon nets shall have a mesh at least 8½ inches stretched measure, and red salmon nets a mesh at least 5¾ inches stretched measure, between knots.

4. Commercial fishing for king salmon may begin at any time after the appearance of the run but must close by midnight of July 25 of each year.

5. Commercial fishing for red salmon shall not begin prior to midnight of June 25 and must close by midnight of July 25 of each year, when all commercial fishing for salmon shall cease in this area.

6. The trailing of web behind any fishing boat is prohibited above the markers fixing closed waters.

7. The use of motor-propelled fishing boats in catching salmon is prohibited.

8. Fishing for smelts in localities where red salmon are migrating is prohibited.

9. Commercial fishing for salmon is prohibited in the Ugashik River above a line extending at right angles across said river 500 yards below the mouth of King Salmon River.

10. Commercial fishing for salmon is prohibited above a line extending at right angles across Kvichak Bay from the marker on a high point on the east bank of Prosper Creek, about 700 yards above the Koggiung Cannery of the Alaska Packers Association, to the marker on the opposite side, the course being about north, 44° west, magnetic.

II. Alaska Peninsula Area

The Alaska Peninsula area is hereby defined to include all territorial coastal and tributary waters of the Alaska Peninsula from Cape Menshikof on the Bering Sea shore and extending in a southwesterly direction to Unimak Pass, thence in a northeasterly direction along the Pacific side of the Alaska Peninsula to Castle Cape (Tuliumnit Point). The waters of Unimak, the Sannak, the Shumagin, and other adjacent islands are included.

1. In the waters of Nelson Lagoon, Herendeen Bay, and Port Moller the 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock postmeridian of Friday of each week until 6 o'clock antemeridian of the Monday following, and from 12 o'clock midnight of each Tuesday until midnight of the following Wednesday, making a total weekly closed period in these waters of 84 hours which shall be effective throughout the entire salmon fishing season of each year.

2. In all other waters of this area the 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock postmeridian of Friday of each week until 6 o'clock antemeridian of the Monday following, making a weekly closed period of 60 hours: *Provided*, That this extension of 24 hours closed period each week shall not be effective after midnight of July 20 each year.

3. Commercial fishing for salmon is prohibited in Thin Point Lagoon and stream and within a distance of 500 yards outside the entrance to said lagoon.

III. Chignik Area

The Chignik area is hereby defined to include the territorial coastal and tributary waters of Alaska along the mainland shore from Castle Cape (Tuliumnit Point) to Cape Kumnik.

1. The take of salmon within a line from Castle Cape to Cape Kumliun shall not exceed 50 per cent of the total run as determined at the weir in Chignik River operated by the Bureau of Fisheries.

IV. Kodiak Area

The Kodiak area is hereby defined to include the waters of the mainland shore extending from Cape Douglas southwestward to Cape Kumnik and the territorial coastal and tributary waters of Alaska surrounding Kodiak and adjacent islands, but excluding the waters embraced within the Afognak Forest and Fish Culture Reserve established by presidential proclamation of December 24, 1892.

Salmon fishery

1. The use of purse seines and floating traps for the capture of salmon is prohibited.

2. Commercial fishing for salmon is prohibited along the western shore of Kodiak Island between Cape Alitak and Cape Karluk.

3. Commercial fishing for salmon is prohibited in the Karluk River and within 100 yards of its mouth where it breaks through Karluk Spit into Shelikof Strait. The take of salmon in Karluk waters shall not exceed 50 per cent of the total run as determined at the weir in Karluk River operated by the Bureau of Fisheries.

4. Commercial fishing for salmon is prohibited from the village of Uyak in a general westerly direction to Cape Uyak.

5. In all waters inside of a line from Outlet Cape to Cape Uganik and to Miners Point, including Uganik Bay, Viekoda Bay, Terror Bay, and connecting and tributary waters, the 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock postmeridian of Friday of each week until 6 o'clock antemeridian of the Monday following, making a weekly closed period of 60 hours.

6. The taking of salmon within a line from Alitak Cape to Trinity Cape shall not exceed 50 per cent of the total run as determined at the weirs on tributary waters of Alitak Bay operated by the Bureau of Fisheries.

7. Commercial fishing for salmon inside of a line from Cape Alitak to Trinity Cape shall be conducted solely by beach seines and traps

Herring fishery

1. Gill nets used in catching herring shall not be of smaller mesh than 3 inches, stretched measure.

2. No one shall place, or cause to be placed, across the entrance of any lagoon or bay any net or other device which will prevent the free passage at all times of herring in and out of said lagoon or bay.

V. Cook Inlet Area

The Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area.

Salmon fishery

1. The 36-hour closed period for salmon fishing, prescribed by section 5 of the act approved June 6, 1924, is hereby extended to include the period from 6 o'clock antemeridian of Saturday of each week to 6 o'clock antemeridian of the Monday following, making a weekly closed period of 48 hours.

2. Commercial fishing for salmon is prohibited above a line from Point Possession to the western limit of the closed area around the mouth of the Susitna River.

3. Commercial fishing for salmon is prohibited in Chinik Inlet, Kamishak Bay, within a line which joins the outer headlands of the inlet and passes outside the two small islands which lie near its entrance.

4. The use of purse seines and floating traps for the capture of salmon is prohibited.

Herring fishery

1. Fishing for herring is prohibited during the period from January 1 to May 31 of each calendar year, except for bait or for local food purposes.

2. The use of purse seines in the capture of herring is prohibited at all times in Halibut Cove and Lagoon, including the waters within a line drawn from the light on Ismailof Island to the outermost point on Glacier Spit.

3. The maintaining of a herring pound or the dumping of offal and dead herring in the waters of Halibut Cove and Lagoon is prohibited.

4. Gill nets used in catching herring shall not be of smaller mesh than 3 inches, stretched measure.

5. No one shall place, or cause to be placed, across the entrance of any lagoon or bay any net or other device which will prevent the free passage at all times of herring in and out of said lagoon or bay.

VI. Prince William Sound Area

The Prince William Sound area is hereby defined to include all territorial coastal and tributary waters of Alaska extending from Point Whitshed on the east to and including Resurrection Bay on the west.

Salmon fishery

1. The 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock antemeridian of Saturday of each week until 6 o'clock antemeridian of the Monday following, making a weekly closed period of 48 hours.

2. Commercial fishing for salmon is prohibited at all times within 1,000 yards of the mouth of Coghill River, the mouth of Eshamy (Chenaga) River, and the mouths of Robe River, Lowe River, and other unnamed streams flowing into Port Valdez in the immediate vicinity of Valdez.

3. In Eshamy Bay, Eshamy Lagoon, and tributary waters, outside the closed area around the mouth of Coghill River, and outside the closed area around the mouths of Robe River, Lowe River, and other unnamed streams flowing into Port Valdez in the immediate vicinity of Valdez there shall be a distance interval of at least 200 yards both endwise and laterally at all times between all nets operated. Nets operated in these waters shall not exceed 100 yards each in length, and shall be set in substantially a straight line.

Herring Fishery

1. Fishing for herring is prohibited during the period from January 1 to June 24, both dates inclusive, and from November 1 to December 31, both dates inclusive, of each calendar year, except for bait or for local food purposes.

2. Gill nets used in catching herring shall not be of smaller mesh than 3 inches, stretched measure.

3. No one shall place, or cause to be placed, across the entrance of any lagoon or bay any net or other device which will prevent the free passage at all times of herring in and out of said lagoon or bay.

VII. Copper River Area

The Copper River area is hereby defined to include all territorial coastal and tributary waters of Alaska extending from Point Whitshed on the west to and including Bering River on the east.

1. Commercial fishing for salmon shall not begin prior to midnight of May 25 of each year.

2. The 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock postmeridian of Friday of each week until 6 o'clock antemeridian of the Monday following, making a weekly closed period of 60 hours.

3. Stake nets for the capture of salmon shall not exceed 600 feet in length, and shall be set in substantially a straight line.

4. The use of traps for the capture of salmon is prohibited.

VIII. Southeastern Alaska Area

The southeastern Alaska area is hereby defined to include all territorial coastal and tributary waters of Alaska extending from Dixon Entrance on the south to and including Yakutat Bay on the north.

1. In the waters of this area west of the one hundred and thirty-ninth meridian of west longitude the 36-hour closed period for salmon fishing prescribed by section 5 of the act of June 6, 1924, is hereby extended to include the period from 6 o'clock antemeridian of Saturday of each

week until 6 o'clock antemeridian of the Monday following, making a weekly closed period of 48 hours.

2. Commercial fishing for salmon within the waters between the fifty-seventh and sixtieth parallels of north latitude and east of the one hundred and thirty-ninth meridian of west longitude is prohibited for 20 days from midnight of August 11 to midnight of August 31 of each year.

3. Commercial fishing for salmon within the waters south of the fifty-seventh parallel of north latitude, except the west coast of Prince of Wales Island and adjacent islands, is prohibited for 20 days from midnight of August 20 to midnight of September 9 of each year.

4. Commercial fishing for salmon within the waters of the west coast of Prince of Wales Island from Point Baker to Cape Chacon, including the waters of adjacent islands, is prohibited for 20 days from midnight of August 25 to midnight of September 14 of each year.

5. Commercial fishing for salmon is prohibited at all times in Yes Bay and within 1,000 yards outside of a line from Bluff Point to Syble Point.

6. Commercial fishing for salmon is hereby prohibited inside of markers which shall be established therefor in the following-described waters within this area:

(*a*) Thorne and Tolstoi Bays, indenting the eastern shore of Prince of Wales Island.
(*b*) Walker Cove, on the mainland tributary to Behm Canal.
(*c*) Naha Bay, indenting the western shore of Revillagigedo Island.
(*d*) Thoms Place, indenting the southwestern shore of Wrangell Island on Zimovia Strait.
(*e*) Olive Cove, indenting the northeastern shore of Etolin Island.
(*f*) Anita Bay, on Etolin Island, opening into Zimovia Strait.
(*g*) Tenakee Inlet and Freshwater Bay, indenting the eastern shore of Chichagof Island.
(*h*) Wilson Cove, indenting the western shore of Admiralty Island.
(*i*) Whitewater Bay, indenting the western shore of Admiralty Island.
(*j*) Saginaw Bay, indenting the northwestern shore of Kuiu Island.
(*k*) Ankau Creek and Inlet, in the Yakutat Bay region.
(*l*) Akwe or Ahquay River, in the Yakutat Bay region.

GENERAL REGULATIONS

By virtue of the authority conferred by the acts approved June 6, 1924, and June 26, 1906, the following regulations shall be immediately effective in all waters of Alaska, including the special areas already described above:

1. During closed periods all salmon traps within the areas affected shall be closed in accordance with the method prescribed by section 5 of the act of June 6, 1924.

2. All persons engaged in fishery operations are warned to give due regard to all markers erected by the Department of Commerce to indicate waters closed to fishery operations by the provisions of the act of June 6, 1924, and of regulations promulgated thereunder. Section 3 of that act specifically states that the mouths of creeks, streams, or rivers shall be taken to be as determined by the Secretary of Commerce and marked in accordance therewith.

3. In waters where a rack or weir is maintained by the Bureau of Fisheries for the purpose of counting salmon ascending to the spawning grounds, records of the catch of salmon shall be furnished daily by all operators to the local representative of the Bureau of Fisheries in charge, and upon notification by the Commissioner of Fisheries or his authorized representative that an excessive proportion of the run is being taken so that the escapement of any species is less than the 50 per cent specified by section 2 of the act of June 6, 1924, all commercial fishing operations shall at once be discontinued and shall not be resumed until permission therefor is granted by the Commissioner of Fisheries or his duly authorized representative.

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4. The driving of salmon downstream and the causing of salmon to go outside the protected area at the mouth of any salmon stream are expressly prohibited.

5. During the inspection of the salmon fisheries by the agents and representatives of this department they shall have at all times free and unobstructed access to all canneries, salteries, and other fishing establishments and to all hatcheries.

6. All persons, companies, or corporations owning, operating, or using any stake net, set net, trap net, pound net, or fish wheel for taking salmon or other fishes shall cause to be placed in a conspicuous place on said trap net, pound net, stake net, set net, or fish wheel the name of the person, company, or corporation owning, operating, or using same, together with a distinctive number, letter, or name which shall identify each particular stake net, set net, trap net, pound net, or fish wheel, said lettering and numbering to consist of black figures and letters, not less than 6 inches in length, painted on white ground.

7. If in the process of curing salmon bellies the remaining edible portion of the fish is not used, such action will be regarded as wanton waste within the meaning of section 8 of the act of June 26, 1906, and those who engage in this practice will be reported for prosecution as provided for in the act.

8. These regulations do not apply to the Afognak reservation, fishing within which is prohibited, except by resident natives, by the terms of the law and Executive order creating it.

9. The minimum size of razor clams taken for commercial purposes is fixed at 4½ inches in total length of shell. Not more than 5 per cent of the clams taken may measure less than this minimum.

10. These regulations shall be subject to such change or revision by the Secretary of Commerce as may appear advisable from time to time. They shall be in full force and effect immediately from and after date of issue.

HERBERT HOOVER,
Secretary of Commerce.

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Document A/CONF.13/1

HISTORIC BAYS

MEMORANDUM BY THE SECRETARIAT OF THE UNITED NATIONS

(Preparatory document No. 1)

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Introduction

I. *Object of the present study*

This study is intended for the United Nations Conference on the Law of the Sea, to be held in pursuance of General Assembly resolution 1105 (XI) of 21 February 1957.[1]

2. By the terms of that resolution, the General Assembly has referred to the Conference, as the basis for its proceedings, the draft articles concerning the law of the sea adopted by the International Law Commission at its eighth session. The Commission's draft article 7 deals with bays and reads as follows:

"1. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain landlocked waters and ..... rate

[1] *Official Records of the General Assembly, Eleventh Session, Supplement No. 17 (A/3572), p. 54.*

more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle drawn on the mouth of that indentation. If a bay has more than one mouth, this semi-circle shall be drawn on a line as long as the sum total of the length of the different mouths. Islands within a bay shall be included as if they were part of the water area of the bay.

"2. The waters within a bay, the coasts of which belong to a single State, shall be considered internal waters if the line drawn across the mouth does not exceed fifteen miles measured from the low-water line.

"3. Where the mouth of a bay exceeds fifteen miles, a closing line of such length shall be drawn within the bay. When different lines of such length can be drawn that line shall be chosen which encloses the maximum water area within the bay.

"4. The foregoing provisions shall not apply to so-called 'historic' bays or in any cases where the straight baseline system provided for in article 5 is applied."[8]

3. As will be gathered from the provisions above, the Commission excluded the so-called "historic" bays from the scope of its general rules concerning ordinary bays. The question of this class of bays was, therefore, reserved by the Commission.

4. The object of this memorandum, prepared by the Secretariat of the United Nations, is to provide the Conference with material relating to "historic bays".

5. Part I describes the practice of States by reference to a few examples of bays which are considered to be historic or are claimed as such by the States concerned. Part I then proceeds to cite the various draft codifications which established the theory of "historic bays", and the opinions of learned authors and of Governments on this theory. Part II discusses the theory itself, inquiring into the legal status of the waters of bays regarded as historic bays, and setting forth the factors which have been relied on for the purpose of claiming bays as historic. The final section is intended to show that the theory does not apply to bays only but is more general in scope.

II. *Definition of the subject*

A. *Bays and gulfs*

6. Dictionaries differentiate between the terms "bay" and "gulf", applying the former to a small indentation of the coast and the latter to a much larger indentation; in other words, a bay would be a small gulf. The distinction is not, however, reflected in geography. A cursory glance at an atlas will show that certain maritime areas are designated as bays although they are of considerable size, while other relatively much smaller areas are described as gulfs. For example, despite its name, Hudson Bay is vast, whereas the Gulf of St. Lopez is not more than four kilometres across at its entrance.

7. This paper deals with both bays and gulfs, geographical terms being immaterial to the subject. The pages which follow contain numerous references to penetrations of the sea inland, variously designated as bays and as gulfs without regard to their size. The usage of geographical nomenclature will be respected. In cases, however, where the text is not concerned with specific penetrations, the word "bay" will be used to denote both bays and gulfs.

B. *"Historic bays" and "historic waters"*

8. As indicated in part II of this paper, the theory of historic bays is of general scope. Historic rights are claimed not only in respect of bays, but also in respect of maritime areas which do not constitute bays, such as the waters of archipelagos and the water area lying between an archipelago and the neighbouring mainland; historic rights are also claimed in respect of straits, estuaries and other similar bodies of water. There is a growing tendency to describe these areas as "historic waters", not as "historic bays". The present memorandum will leave out of account historic waters which are not also bays. It will, however, deal with certain maritime areas which, though not bays *stricto sensu*, are of particular interest in this context by reason of their special position or by reason of the discussion or decisions to which they have given rise.[9]

III. *Origin and justification of the theory of historic bays*

9. The origin of this theory is traceable to the efforts made in the nineteenth century to determine, in bays, the baseline of the territorial sea. In view of the intimate relationship between bays and their surrounding land formations and in the light of the provisions of municipal law and of conventions governing the subject, proposals were made the object of which was to advance the starting line of the territorial sea towards the opening of bays. The intention was that, in bays, the territorial sea should not be measured from the shore — the method proposed in the case of more or less straight coasts — but should, rather, be reckoned as from a line drawn further to seaward. On this point agreement was virtually unanimous, though the exact location of the line from which the territorial sea was to be reckoned continued to be the subject of controversy. According to various proposals put forward, the territorial sea was to be measured from a straight line drawn across the bay at a point at which its two coasts were a specified distance apart (six miles, ten miles, twelve miles, etc.); the waters lying to landward of that line would be part of the internal waters of the coastal State.

10. This attempt to restrict, in respect of bays, the maritime area claimable by the coastal State as part of its internal waters conflicted with existing situations. There were bays of considerable size the waters of which

[8] *Ibid., Supplement No. 9* (A/3159) p. 15.

[9] A case in point is that of the maritime areas created by the application of the "straight baselines" method which, as regards the Norwegian coast, was approved by the International Court of Justice in the Anglo-Norwegian Fisheries case (see *infra*, especially paras. 50-72) and which is the subject of article 5 of the draft articles concerning the law of the sea adopted by the International Law Commission at its eighth session (see *infra*, especially paras. 104-108).

were wholly the property of the coastal States concerned — the territorial sea being accordingly reckoned, in these cases, from the opening of the bay in question towards the sea. Hence, for the purpose of codification, the choice lay between two possible courses, *viz.* allowing for these cases by means of an exception to the general rule to be formulated; and ignoring them by making the rule apply to all bays, regardless of their *de facto* status. The second course was felt to be arbitrary, and capable, if applied in practice, of causing international difficulties. Most of the draft codifications which dealt with bays endorsed the first solution. There remained, however, and there still remains, the question which bays are covered by the exception. The mere fact that a State claims the ownership of a bay which is not already territorial by virtue of the general rule does not *per se* ensure acceptance of the claim. The claim would have to be substantiated by reference to a specific criterion. And, according to the theory as originally conceived, this criterion was to be essentially historic. The modern view, however, has gone beyond this conception. According to one school of thought (which is more particularly discussed elsewhere in this paper), the proprietary title may be founded either on considerations connected with history or else on considerations of necessity, in which latter case the historical element might be lacking altogether.

PART I

The practice of States; draft international codifications of the rules relating to bays; opinions of learned authors

1. THE PRACTICE OF STATES: SOME EXAMPLES OF HISTORIC BAYS

11. The undermentioned bays, which are cited for the purpose of illustration, are regarded as historic bays or are claimed as such by the States concerned. They are grouped under two headings, namely, bays the coasts of which belong to a single State, and bays the coasts of which belong to two or more States.

A. *Bays the coasts of which belong to a single State*

Sea of Azov

12. The Sea of Azov is ten miles across at its entrance. It is situated entirely within the southern part of the territory of the Union of Soviet Socialist Republics and extends a considerable distance inland, its dimensions being approximately 230 by 110 miles. De Cussy[4] mentions the Sea of Azov among the gulfs "which may be regarded as part of the territorial sea". P. C. Jessup[5] states that this contention "seems reasonable and any such Russian claim would not be contested". A. N. Nikolaev regards the Sea of Azov as part of the "internal waters of the USSR" (see *infra*, para. 92). Gidel[6] is of the opinion that certain maritime areas — of which the Sea of Azov is one — should not be treated as falling within the category of historic waters "because, pursuant to the rules of the ordinary international law of the sea, these areas are in any case internal waters" (see *infra*, paras. 32-34).

Bay of Cancale (or Granville Bay)

13. This bay (in the north-western part of France) is about seventeen miles across at its entrance. In its reply to the inquiries advanced to Governments by the Preparatory Committee of the Conference on the Codification of International Law, 1930, the French Government stated that "Granville Bay is recognized to consist of territorial waters by the Fisheries Convention of 2 August 1839, concluded with Great Britain (article 1) and by article 2 of the Fisheries Regulations concluded on 24 May 1843 with Great Britain."[7] Gidel[8] states that "the waters of Granville Bay are recognized as French [territorial waters], even though the bay is about seventeen miles across at its entrance". According to Jessup,[9] the bay "seems to be claimed by France without objection. This may be due to the practical appropriation of the bay through the exploitation of its oyster fisheries over a long period. By treaties of 1839 and 1867 Great Britain recognized the exclusive French fisheries in those waters".

Bay of Chaleur

14. This bay (between the Provinces of Quebec and New Brunswick in Canada) does not exceed twelve miles in width; it is about 100 miles long. Its entrance into the Gulf of St. Lawrence is sixteen miles across. In its decision concerning the status of the bay, given in the case of *Mowat v. McFee* (1880), the Supreme Court of Canada held that the Bay of Chaleur was included in its entirety "within the present boundaries of the Provinces of *Quebec* and *New Brunswick*, and within the Dominion of Canada".[10]

15. "The arbitral award in the North Atlantic Fisheries case, 1910, upheld the British contention concerning the Bay of Chaleur".[11] In that award, the tribunal appointed by the Permanent Court of Arbitration recommended that the limit of the bay should be constituted by "the line from the light at Birch Point on Miscou Island to Macquereau Point

[4] *Phases et causes célèbres du Droit maritime des Nations*, 1856, pp. 97-98. In addition to the Sea of Azov the writer mentions "among the gulfs ... which may be regarded as part of the territorial sea, subject to the jurisdiction and control of the State by virtue of the right of self-preservation inherent in its independence" the Sea of Marmara, the Zuyder Zee and the Dollart, the Gulfs of Bothnia and Finland, the Gulf of St. Lawrence in North America, part of the Gulf of Mexico (to the extent indicated in respect of each of the coastal States of that Gulf), the innermost part of the Adriatic Gulf in the vicinity of Venice, Trieste, Rijeka (Fiume), etc., the Gulf of Naples, Salerno, Taranto, Cagliari, Thérmai (Salonica), Coron, Lepanto, etc.

[5] *The Law of Territorial Waters and Maritime Jurisdiction*, 1927, p. 383.

[6] *Droit international public de la Mer*, 1930-1934, vol. III, p. 663.

[7] Ser. L.o.N.P. 1929, v. 2, p. 160.

[8] *Op. cit.*, p. 657.

[9] *Op. cit.*, pp. 385-386.

[10] Reports of the Supreme Court of Canada, vol. 5 (1880), p. 66.

[11] Gidel, *op. cit.*, p. 659.

light".[13] The recommendation was accepted by Great Britain and the United States by the Treaty[14] of 20 July 1912 (article 2).[14]

Chesapeake Bay

16. This bay is twelve miles across at its entrance; it is nowhere more than twenty miles wide and is about 200 miles long. Its status was considered in 1885 by the Second Court of Commissioners of Alabama Claims in the case of the "Alleganean", a vessel which had been sunk by Confederate forces in the waters of the bay. The Court held[15] that Chesapeake Bay was entirely within the territorial jurisdiction of the United States.

17. After citing the case-law of the English courts concerning the Bristol Channel and Conception Bay, and the opinions of certain writers on the status of bays, the Court proceeded:

"We must now examine the local circumstance touching the status of Chesapeake Bay, and then determine whether those should be held to be the open ocean or jurisdictional waters of the United States in the light of these authorities.

"The headlands are about twelve miles apart, and the bay is probably nowhere more than twenty miles in width. The length may be 200 miles. To call it a bay is almost a misnomer. It is more a mighty river than an arm or inlet of the ocean. It is entirely encompassed about by our own territory, and all of its numerous branches and feeders have their rise and their progress wholly in and through our own soil. It cannot become an international commercial highway; it is not and cannot be made a roadway from one nation to another.

"The second charter of King James I to the Virginia Company in the year 1609 granted: 'All those lands, countries, and territories situate, lying, and being in that part of America called Virginia, from the point of land called Cape or Point Comfort, all along the seacoast to the northward 200 miles, and all along the seacoast to the southward 200 miles, and all that space and circuit of land lying from the seacoast of the precinct aforesaid up into the land throughout from sea to sea, west and northwest, together with all the soils, grounds, havens, ports, . . . rivers, waters, fishings, etc.'

"This language would seem to place Chesapeake Bay within the boundary lines of Virginia. A line running north (as near as may be) from Point Comfort along the seacoast crosses the mouth of the bay from Cape Henry to Cape Charles.

"By the King James Charter to Lord Baltimore in 1632, erecting the territory of Maryland, the southern boundary line is made to cross Chesapeake Bay from Smiths Point, at the mouth of the Potomac River, to Watkin's Point, on the eastern shore, which apparently places a portion of this bay within the territory of Maryland. Had this not been intended, the boundary would presumably have followed the shore line around the bay.

"It is a part of the common history of the country that the States of Virginia and Maryland have from their earliest territorial existence claimed jurisdiction over these waters, and it is of general knowledge that they still continue to do so.

"The legislation of Congress has assumed Chesapeake Bay to be within the territorial limits of the United States. The acts of 31 July 1789, ch. 5; 4 August 1790, ch. 35; and 2 March 1799, ch. 128, section 11, establishing revenue districts, provided that 'the authority of the officers of the district (Norfolk to Portsmouth) shall extend over all the waters, shores, bays, harbours, and inlets comprehended within a line drawn from Cape Henry to the mouth of James River'. By section 549, Rev. Stat. U.S., the eastern judicial district for Virginia embraces the 'residue of the State' not included in the western district. The boundaries of the State include all of Chesapeake Bay south of a line running from Smiths Point to Watkins Point, and hence the eastern district must embrace so much of the bay."

18. Referring to the decision of 1793 in respect of Delaware Bay (see infra, para. 22) the Court noted:

"If it be said that the mere claims of a nation to jurisdiction over adjacent waters are to be accepted with some degree of hesitation, then the action in reference to the *Grange* is of much weight, for there the claim made by the United States was promptly acquiesced in by two great foreign Powers, when passions were excited, and when such acquiescence was greatly against the immediate interest of one of the combatants, as well as against the general interest of both.

"It will hardly be said that Delaware Bay is any the less an inland sea than Chesapeake Bay. Its configuration is not such as to make it so, and the distance from Cape May to Cape Henlopen is apparently as great as that between Cape Henry and Cape Charles."

19. After stressing that the question to be adjudicated was "of very considerable national importance", the Court concluded:

"Considering, therefore, the importance of the question, the configuration of Chesapeake Bay, the fact that its headlands are well marked, and but twelve miles apart, that it and its tributaries are wholly within our own territory, that the boundary lines of adjacent States encompass it; that from the earliest history of the country it has been claimed to be territorial waters, and that the claim has never been questioned; that it cannot become the pathway from one nation to another; and remembering the doctrines of the recognized authorities upon international law, as well as the holdings of the English courts as to the Bristol Channel and Conception Bay, and bearing in mind the matter of the brig "Grange" and the position taken by the Government as to Delaware Bay, we are forced to the conclusion that Chesapeake Bay must be held to be wholly within the territorial jurisdiction and authority of the Government of the United States and no part of the 'high seas' within the meaning of the term used in section 5 of the act of 5 June 1872."

Conception Bay

20. This bay (in Newfoundland) is twenty miles across at its entrance, has an average width of fifteen miles and is some forty miles long. It has been claimed by Great Britain as being entirely within its jurisdiction, a claim which was upheld in 1877 by the Privy Council in the case *Direct United States Cable Co v. The Anglo-American Telegraph Co.*[16] The Privy Council said:

[13] Scott, *Hague Court Reports, First Series*, 1916, p. 189. Gidel, *op. cit.*, p. 639, explains this delimitation as follows: "This bay was considered British as far as a line sixteen miles long drawn between the two lights at Birch Point towards Miscou Island (Marquereau Point light)."

[14] *Treaties and Conventions between the United States and other Powers*, 1910-23, vol. III, p. 2632.

[15] Higgins and Colombos: *The International law of the Sea*, London, 1943, p. 119.

[16] Moore, J. B., *A History and Digest of the International Arbitrations to which the United States has been a Party* (Washington, 1898) vol. 4, pp. 4338-4341.

[16] Higgins and Colombos, *op. cit.*, p. 116.

"Passing from the common law of England to the general law of nations, as indicated by the text writers on international jurisprudence, we find an universal agreement that harbours, estuaries and bays landlocked belong to the territory of the nation which possesses the shores round them, but no agreement as to what is the rule to determine what is 'bay' for this purpose.

"It seems generally agreed that, where the configuration and dimensions of the bay are such as to show that the nation occupying the adjoining coasts also occupies the bay, it is part of the territory; and, with this idea, most of the writers on the subject refer to defensibility from the shore as the test of occupation: some suggesting, therefore, a width of one cannon-shot from shore to shore, or three miles; some, a cannon-shot from each shore, or six miles; some, an arbitrary distance of ten miles. All of these are rules which, if adopted, would exclude Conception Bay from the territory of Newfoundland; but also would have excluded from the territory of Great Britain that part of the Bristol Channel which in *Regina v. Cunningham* was decided to be in the county of Glamorgan. On the other hand, the diplomatists of the United States in 1793 claimed a territorial jurisdiction over much more extensive bays, and Chancellor Kent, in his Commentaries, though by no means giving the weight of his authority to this claim, gives some reason for not considering it altogether unreasonable.

"It does not appear to their Lordships that jurists and text writers are agreed what are the rules as to dimensions and configuration which, apart from other considerations, would lead to the conclusion that a bay is or is not a part of the territory of the State possessing the adjoining coasts, and it has never, that they can find, been made the ground of judicial determination. If it were necessary in this case to lay down a rule, the difficulty of the task would not deter their Lordships from attempting to fulfil it. But in their opinion it is not necessary to do so. It seems to them that, in point of fact, the British Government has for a long period exercised dominion over this bay, and that their claim has been acquiesced in by other nations, so as to show that the bay has been for a long time occupied exclusively by Great Britain, a circumstance which, in the tribunals of any country, would be every important. And, moreover (which in a British tribunal is conclusive), the British Legislature has by Acts of Parliament declared it to be part of the British territory, and part of the country made subject to the Legislature of Newfoundland."[17]

21. In its award, rendered on 7 September 1910, the North Atlantic Coast Fisheries Arbitral Tribunal refrained from expressing any opinion on Conception Bay,[18] on the grounds that that bay had been provided for by the above-mentioned decision of the Privy Council, in which decision the United States had acquiesced.[19]

Delaware Bay

22. The status of Delaware Bay, which is ten miles across at its entrance and forty miles long from its entrance to the mouth of the Delaware River, was determined in connexion with the case of the British vessel *Grange*, captured in 1793 in the waters of the bay by the French frigate *L'Embuscade*. The incident occurred while Great Britain and France were at war, the United States being neutral. The Attorney-General, E. Randolph, consulted, rendered an opinion (from which extracts are given below) to the effect that the vessel *Grange* had been captured in neutral territory:

"The essential facts are:

"That the river Delaware takes its rise within the limits of the United States;

"That, in the whole of its descent to the Atlantic Ocean, it is covered on each side by the territory of the United States;

"That, from tide water to the distance of about sixty miles from the Atlantic Ocean, it is called the *river* Delaware;

"That, at this distance from the sea, it widens and assumes the name of the *Bay* of Delaware, which it retains to the mouth;

"That its mouth is formed by the capes Henlopen and May; the former belonging to the State of Delaware, in property and jurisdiction, the latter to the State of New Jersey;

"That the Delaware does not lead from the sea to the dominions of any foreign nation;

"That, from the establishment of the British provinces on the banks of the Delaware to the American Revolution, it was deemed the peculiar navigation of the British Empire;

"That, by the Treaty of Paris, on 3 September 1783, his Britannic Majesty relinquished, with the privity of France, the sovereignty of those provinces, as well as of the other provinces and colonies;

"And that the *Grange* was arrested *in* the Delaware *within the capes*, before she had reached the sea, after her departure from the port of Philadelphia.

"... the corner stone of our claim is, that the United States are proprietors of the lands on both sides of the Delaware, from its head to its entrance into the sea.

"... These remarks may be enforced by asking, What nation can be injured in its rights by the Delaware being appropriated to the United States? And to what degree may not the United States be injured, on the contrary ground? It communicates with no foreign dominion; no foreign nation has, ever before, exacted a community of right in it, as if it were a main sea; under the former and present governments, the exclusive jurisdiction has been asserted; by the very first collection law of the United States, passed in 1789, the county of Cape May, which includes Cape May itself, and all the waters thereof, theretofore within the jurisdiction of the State of New Jersey, are comprehended in the district of Bridgetown. The whole of the State of Delaware, reaching to Cape Henlopen, is made one district. Nay, unless these positions can be maintained, the bay of Chesapeake, which, in the same law, is so fully assumed to be within the United States, and which, for the length of the Virginia territory, is subject to the process of several counties to any extent, will become a rendezvous to all the world, without any possible control from the United States. Nor will the evil stop here. It will require but another short link in the process of reasoning, to disappropriate the mouths of some of our most important rivers. If, as Vattel inclines to think in the 294th section of his first book, the Romans were free to appropriate the Mediterranean, merely because they secured, by one single stroke, the immense range of their coast, how much stronger must the vindication of the United States be, should they adopt maxims for prohibiting foreigners from gaining, without permission, access into the heart of their country.

"This inquiry might be enlarged by a minute discussion of the practice of foreign nations, in such circumstances. But I pass it by; because the United States, in the commencement

[17] Quoted by Phillimore, *International Law*, vol. I (1879), pp. 289-290.

[18] Scott, *op. cit.*, p. 190.

[19] Higgins and Colombos, *op. cit.*, p. 116, quoting de Martens, *Nouveau Recueil Général*, 3rd ed. (1911), vol. 4, pp. 89-129.

of their career, ought not to be precipitate in declaring their approbation of any usages (the precise facts concerning which we may not thoroughly understand) until those usages shall have grown into principles, and are incorporated into the law of nations; and because no usage has ever been accepted, which shakes the foregoing principles.

"The conclusion then is, that the *Grange* has been seized on neutral ground. If this be admitted, the duty arising from the illegal act is restitution."[24]

23. France consented to release the *Grange*. "Great Britain, by requesting the restoration of its captured vessel, recognized that Delaware Bay was within the jurisdiction of the United States and France, by returning the British vessel, tacitly accepted the declaration of territoriality made by the United States."[25]

Bay of El-Arab

24. This bay (in northern Egypt), which is only eighteen miles in depth, is seventy-five miles wide at its opening into the sea. In its reply to questionnaire No. 2 (1926) of the Committee of Experts for the Progressive Codification of International Law, the Egyptian Government stated that "the extent of Egyptian territorial waters was fixed at three miles by the Decree-Laws of 21 April 1926 on Fishing and Sponge-fishing, except in the Bay of El-Arab, the whole of which, according to the Decree-Law on Sponge-fishing, is included in the territorial sea".[26]

25. Articles 1 (*b*) and 4 (*a*) of the Egyptian Decree of 15 January 1951[27] provide that the inland waters of Egypt include the waters of all bays along the Egyptian coasts, without specifying any limit.

26. The British Government protested, through diplomatic channels, against this Decree, stating that it was unable to accept it as being in conformity with the rules of international law. In its note of protest, the British Government pointed out that no historic bay "is situated in Egypt".[28]

Hudson Bay

27. The dimensions of this bay are considerable; its breadth is about 600 miles and its length about 1,000 miles. The Canadian writer, V. Kenneth Johnston[29] gives the following information concerning the status of Hudson Bay:

"In 1906 ... notwithstanding the assumption of the world as to the status of Hudson Bay, the Government of Canada placed on its statute books a statute declaring the waters of Hudson Bay to be territorial waters of Canada (R.S.C. 1927, cap. 73, sec. 9, sub-sec. 10; Statutes of Canada, 1906, cap. 45, sec. 9 (12)). That statute is still in force in Canada without, so far as is known, any protest having been made by any foreign Government. This statute has been and presumably still is being actively enforced in Canada and in Hudson Bay as part of Canada. The Government of Canada, therefore, has appropriated and continues to appropriate Hudson Bay and presumably Hudson Strait as Canadian national waters. ..."

The writer maintains that, in accordance with the rules of international law, Canada has, in respect of that bay, a title based on occupation and on the acquiescence of other States in that occupation.

28. Higgins and Colombos[30] state that:

"... The British claim has not, so far, been expressly admitted by the United States."

And they add:

"The Treaty of 20 July 1912, which was concluded for the purpose of carrying out the award of the Tribunal in the North Atlantic Fisheries Arbitration of 1910, provides 'that it is understood that the award does not cover Hudson Bay', thus reserving all existing British rights to the bay."[31]

Miramichi Bay

29. "Miramichi Bay is situated in New Brunswick, and has a headland width of 14.5 miles. By a New Brunswick Statute of 1799[32] this bay was treated as being within the adjoining county of Northumberland, and subsequent amending acts have confirmed this claim.[33]

"In no single instance has the jurisdiction of Great Britain over these bays been challenged by any other Power than the United States, and the objection of the United States has been limited to the sole question of the extent of the fishing liberties given by the Treaty of 1818."[34]

Bays of Laholm and Skelderviken

30. In its reply to questionnaire No. 2 (1926) of the Committee of Experts for the Progressive Codification of International Law, the Swedish Government stated:

"According to Swedish law, the whole area of any bay which indents the coast to an appreciable extent is in every case to be regarded as territorial water, and the exterior territorial waters are measured from a line drawn across the bay between the two extreme points where the bay merges into the general coast-line. During the Great War, therefore, the Swedish Government always maintained that the Bays of Laholm and Skelderviken, on the south-west coast of Sweden, were entirely Swedish territorial waters.

"In the case of the Bay of Laholm the Swedish argument was singularly strengthened by the provisions of a fisheries convention concluded between Sweden and Denmark. The rule has also been adopted by Swedish jurisprudence."[35]

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[24] Moore, *op. cit.*, vol. I (1906), pp. 735-739.

[25] Fauchille, *Traité de droit international public*, vol. I (1925), p. 361.

[26] Ser. L.o.N.P. 1927, v. 1, p. 257.

[27] *Revue égyptienne de droit international*, vol. 6 (1950), p. 175.

[28] *Ibid.*, vol. 7 (1951), p. 91.

[29] "Canada's title to Hudson Bay and Hudson Strait", in *British Year Book of International Law*, 1934, p. 2.

[30] *Op. cit.*, p. 117.

[31] For Hudson Bay, see also Balch "Is Hudson Bay a closed or open sea?" in *American Journal of International Law*, vol. 6 (1912), p. 409; P. C. Jessup, *op. cit.*, pp. 411-12; Pitt-Cobbett, *Cases in International Law*, vol. 1 (1947), p. 162.

[32] 39 Geo. III, 5.

[33] 50 Geo. III, c. 5; 4 Geo. IV; c. 23; 9 and 10 Geo. IV, c. 3; 4 Wm. IV, c. 51.

[34] From the extract from the British case in the arbitration concerning the North Atlantic coast fisheries, 1909-1910, annexed to the Norwegian Counter-Memorial submitted to the International Court of Justice in the 1951 Anglo-Norwegian Fisheries case (vol. II, p. 271).

[35] Ser. L.o.N.P. 1927, v. 1, p. 232.

31. The position of Sweden in regard to the bays along its coasts, and in particular to Laholm Bay, is set forth by Mr. Elof Lofgren, then legal adviser to the Ministry of Foreign Affairs, in an opinion given on 11 February 1925 in connexion with the capture on 19 January 1925 by the Swedish authorities of the German trawler *Heinrich Augustin*, found trawling at a place situated 1.4 distance minutes outside the closing line of Laholm Bay.[36]

The Zuyder Zee

32. "The Zuyder Zee in Holland lies in two portions, which may be designated the inner and outer. The latter would probably not be considered a closed sea were it not for a fringe of islands which almost completely enclose it save for narrow passages; the body of water thus enclosed is about forty miles long by twenty wide. From this area a narrow passage about nine miles wide leads into the inner portion, which is about forty-five miles long by thirty-five wide.

"These bodies of water are claimed by the Netherlands and, judging by the testimony of the writers, this claim has never been called into question ..."[37]

33. Fauchille[38] states:

"The Zuyder Zee, which is claimed by the Netherlands as its property and from the extremity of which the territorial sea extends, in the general view, to its classic distance, seems to us to be indeed a special sea, governed by the rules relating to bays, because (1) this sea is enclosed by a continuous fringe of islands, separated from each other by narrow passages; (2) it is comparable to a lake, for like a lake it freezes over, whereas the sea resists freezing. The Netherlands claim in respect of the Zuyder Zee has therefore been generally accepted."

34. The Netherlands title to this sea can be based not only on a historic right proper but also on ordinary international law. A. Chrétien,[39] who does not admit the theory of historic bays (see *infra*, para. 92) concedes nevertheless that certain small bays, among others the Zuyder Zee, should be regarded as subject to the full and absolute sovereignty of the coastal State. Gidel[40] mentions the Zuyder Zee among the maritime areas which are sometimes designated as historic "but which should not be treated as falling within that category [of historic waters] because pursuant to the rules of the ordinary international law of the seas these areas are in any case internal waters".

Norwegian bays and fjords

35. In its reply to questionnaire No. 2 (1926) of the Committee of Experts for the Progressive Codification of International Law, the Norwegian Government stated:

"... The Norwegian bays and fjords have always been regarded and claimed by Norway as forming part of the territory of the Kingdom. This attitude is the necessary result of history, of local conditions along the very indented Norwegian coasts with their remarkable geographical peculiarities, and of the capital importance of a rational exploitation of the fjords and coastal archipelagos (*skjaergaard*) from the point of view of living conditions for the coastal population, and national economy. By fjords we mean not only those sea areas which are bounded on both sides by the continental coast-line, but also areas bounded by a continuous series of islands or a coastal archipelago (*skjaergaard*). Norwegian law has always held from most ancient times that these bays and fjords are *in their entirety* an integral part of Norwegian territorial waters, even should the breadth at the seaward end exceed the more or less arbitrary maxima breadths which certain countries, with a less characteristic coastline, have recently established for special purposes in view of their own needs and for very dissimilar reasons."[41]

36. These claims were formulated more strongly in the Fisheries Case between the United Kingdom and Norway, decided by the International Court of Justice in its judgement given on 18 December 1951.[42] It will be noted that at the end of his oral reply the Agent of the United Kingdom Government stated:

"... Norway is entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fall within the conception of a bay ..., whether the proper closing line of the indentation is more or less than ten sea miles long." (Conclusion No. 5).[43]

37. In its judgement in that case, the Court concluded that the Svaerholthavet basin had geographically the character of a bay. As to the Lopphavet basin, however, the Court, while not recognizing it as having the character of a bay, agreed that the historic rights claimed by Norway in respect of it were sufficient justification for the line drawn by that country (*infra*., para. 69-72).

38. The Vestfjord,[44] about 100 kilometres across at its entrance and 170 kilometres long, was the subject of a diplomatic dispute when, in 1868, the French vessel *Les Quatre Frères* was seized by the Norwegian authorities in the waters of the fjord. The French Government having protested, the Minister of the Interior of Norway wrote a memorandum to the Norwegian Minister of Foreign Affairs in which the following passage occurs:

"The fisheries in a gulf which is considered to form part of the territorial sea of Norway have been regarded as the exclusive property of this country; it would certainly not be consistent with the principles of international law if it should be possible to produce sudden changes in a legal situation which is based on the tacit knowledge of several centuries."

39. J. Mochot,[45] who quotes this passage from the

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[36] The text of the opinion is reproduced in P. C. Jessup, *op. cit.*, 413-24; also in *Fisheries Case (United Kingdom v. Norway), Judgement* [I.C.J.] of *18 December 1951*, vol. II, Annex 43, pp. 753-61.

[37] P. C. Jessup, *op. cit.*, p. 438.

[38] "*Le droit de l'Etat sur la Mer territoriale*" in *Revue générale de Droit international public*, vol. V (1893), p. 266.

[39] *Principes de Droit international public*, part I, Paris, 1893, p. 102.

[40] *Op. cit.*, p. 663.

[41] Ser. L.o.N.P. 1927, v. 1, p. 174.

[42] See especially the Norwegian Counter-Memorial, *I.C.J., Fisheries Case (United Kingdom v. Norway) Judgement of 18 December 1951*, vol. I, pp. 214-574.

[43] *Ibid., I.C.J. Reports, 1951*, p. 121.

[44] In its judgement in the Fisheries Case, the International Court of Justice noted that "the waters of the Vestfjord, as indeed the waters of all other Norwegian fjords, can only be regarded as internal waters" (*loc. cit.*, p. 142).

[45] *Le Régime des baies et des golfes en droit international*, Paris, 1938, p. 136.

Norwegian Minister's memorandum, says that "France, accepting the Norwegian contention, expressly stated that it did so solely by reason of the special configuration of the coasts of Norway and in derogation of all the rules of international law".

40. Another fjord, the Varangerfjord, which is about thirty miles across at its entrance and fifty miles long, gave rise to difficulties between Great Britain and Norway. In 1911, the British trawler *Lord Roberts* was arrested and sentenced by the Vardö court for trawling in the waters of the fjord. After the British Government had made representations, the Norwegian Government appointed a commission of inquiry. The commission concluded, on historic grounds, that the monopoly of fisheries for the benefit of Norwegian nationals in the Varangerfjord was justified by long and unchallenged usage.[42] [43]

41. Gidel[44] says that the Norwegian claims in respect of the Vestfjord and the Varangerfjord should be considered "as fully admitted, despite certain challenges (by France, in the case of the vessel *Les Quatre Frères*, 1868-69 and by Great Britain in 1869 and most recently in April 1911)".

Bays the coasts of which belong to Portugal

42. In its reply to the inquiry addressed to Governments by the Preparatory Committee for the Codification Conference (1930), the Portuguese Government stated that "Portugal regards as part of her European continental territory the bays formed by the estuaries of the Rivers Tagus and Sado, comprising the areas included between Cape Razo and Cape Espichel and between Cape Espichel and Cape Sines respectively" (see *infra*, para. 93).

Other examples of historic bays

43. The undermentioned maritime areas are likewise regarded as historic bays or are claimed as such by the States concerned:

Argentina: The River Plate estuary.[45]

Australia:

Northern Australia: Van Diemen Gulf (opening: sixteen miles); Buckingham Bay (opening: twenty miles); Blue Mud Bay (opening: fifteen miles);

South Australia: Coffin Bay (opening: twelve miles); Streaky Bay (opening: fourteen miles); Spencer Gulf (opening: forty-eight miles); Investigator Strait with St. Vincent's Gulf (opening: twenty-eight miles);

Western Australia: Exmouth Gulf (opening: thirteen miles); Roebuck Bay (opening: fourteen miles); Shark Bay (opening: fourteen miles);

Queensland: Broad Sound (opening: fifteen miles); Upstart Bay (opening: ten miles); Moreton Bay (opening: ten miles); Hervey Bay (opening: thirty-eight miles);

Tasmania: Oyster Bay (opening: fifteen miles); Storm Bay (opening: thirteen miles).[46]

Dominican Republic: Bays of Samaná, Ocoa and Neyba.[47]

France: *Equatorial Africa*: Bays of Mondah, Cape Lopez (opening: eighteen miles), Loango, Pointe Noire and Corisco (Río Muni) and the Estuary of the Gabon; *East Africa*: Tadjura Gulf (opening: over ten miles).[48]

Tunisia: Gulf of Tunis (opening: twenty-three miles),[49] Gulf of Gabès (opening: fifty miles).[50]

Union of Soviet Socialist Republics: Kara Sea, Laptev Sea, East Siberian Sea and Chukchi Sea.[51]

United Kingdom: Bristol Channel.[52]

United States of America: Monterey Bay,[53] Long Island Sound.[54]

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[42] Act No. 3342 of 13 July 1952, article 2 (United Nations Legislative Series, *Laws and Regulations on the Régime of the Territorial Sea*, ST/LEG/SER.B/6, p. 11).

[43] Gidel, *op. cit.*, p. 657.

[44] Gidel, *op. cit.*, p. 663.

[45] *Ibid.*

[46] See A. N. Nikolaev, *infra*, para. 92.

[47] The case of *Regina v. Cunningham* in 1859: a collision had occurred three miles from the shore of the county of Glamorgan in Wales in the neighbourhood of Cardiff at a spot where the width of the Bristol Channel is slightly more than ten miles. It was held by Cockburn, C. J., that the part of the sea where the collision had occurred formed part of the county of Glamorgan. Then, using more general language, the learned Chief Justice said: "The whole of this inland sea between the counties of Somerset and Glamorgan is to be considered as within the counties by the shores of which its several parts are respectively bounded" (Bell's *Crown Cases*, 72, 86).

The question of the juridical status of the Bristol Channel arose again in the case of the "Fagernes" [1926] P. 185; [1927] P. 311, (C.A.). A collision had occurred more than twenty miles to the east of Lundy Island and some miles to the eastward of a line drawn from Bull Point in Devon to Port Eynon in Glamorgan. The place where the collision had occurred was also roughly half way across the Bristol Channel, which in this area is about twenty miles wide. Hill, J., held that the collision had taken place in British territory. However, his judgement was overruled by the Court of Appeal [1927] P. 311, which was much influenced by the fact that the Attorney-General, when asked by the Court whether the Crown did or did not claim that particular part of the Bristol Channel where this collision had occurred as being within the territorial jurisdiction of the King, replied that it did not. (See also: P. C. Jessup, *op. cit.*, pp. 383-384; Mochot, *op. cit.*, 126-127; Pitt Cobbett, *Cases on International Law*, 6th ed., 1947, pp. 156-157, 160).

[48] P. C. Jessup, *op. cit.*, pp. 428-30.

[49] See *Mahler v. Transportation Co. Case* (1886), 35 N.Y. 352; *J. Duffy Case* (1926, D. C. Conn.) 14 F. (2nd) 426; P. C. Jessup, *op. cit.*, pp. 424-7.

[50] Gidel, *op. cit.*, pp. 661-2.

[51] J. Mochot; *op. cit.*, pp. 136-7.

[52] Op. cit., p. 661.

[53] Gidel, *op. cit.*, pp. 653-4; Emilio Mitre, *Principales Escritos y Discursos*, 1910; Saavedra Lamas, *La crise de la codification et la doctrine argentine du droit international*, vol. I, pp. 318-32. Both Argentina and Uruguay are riparian States of the River Plate.

[54] This list of Australian bays is given by Prof. A. H. Charteris in his *Chapters on International Law*, 1940, p. 99; quoted in the Norwegian Counter-Memorial in the *Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951*, vol. I, pp. 445.

B. *Bays the coasts of which belong to two or more States*

Gulf of Fonseca

44. This gulf, which is bounded by the territories of Nicaragua, Honduras and El Salvador, is nineteen and a half miles across at its entrance between Cape Cosiguina (Nicaragua) and Cape Amapala (El Salvador). By the Treaty of 5 August 1914 between the United States and Nicaragua, the latter country granted to the former, for the term of ninety-nine years, certain rights in a portion of Nicaraguan territory bordering on the Gulf of Fonseca, as well as certain rights for the construction of an interoceanic canal. El Salvador disputed the validity of the Treaty in proceedings instituted against Nicaragua in the Central American Court of Justice. In its judgement, rendered on 9 March 1917, the Court held unanimously that the gulf in question was "an historic bay possessed of the characteristics of a closed sea".[55]

45. The grounds on which this decision was based are important and, accordingly, in order that all the considerations underlying the Court's reasoning may be fully presented, some extracts from its decision are quoted textually:

"In order to fix the international legal status of the Gulf of Fonseca it is necessary to specify the characteristics proper thereto from the threefold point of view of history, geography and the vital interests of the surrounding States.

"The historic origin of the right of exclusive ownership that has been exercised over the waters of the Gulf during the course of nearly four hundred years is incontrovertible, first, under the Spanish dominion — from 1522, when it was discovered and incorporated into the royal patrimony of the Crown of Castile, down to the year 1821 — then under the Federal Republic of the Centre of America, which in that year attained its independence and sovereignty, down to 1839; and, subsequently, on the dissolution of the Federation in that year, the States of El Salvador, Honduras and Nicaragua, in their character of autonomous nations and legitimate successors of Spain, incorporated into their respective territories, as a necessary dependency thereof for geographical reasons and purposes of common defence, both the Gulf and its archipelago, which nature had indented in that important part of the continent, in the form of a gullet.

"During these three periods of the political history of Central America, the representative authorities have notoriously affirmed their peaceful ownership and possession in the Gulf; that is, without protest or contradiction by any nation whatsoever, and, for its political organization and for police purposes, have performed acts and enacted laws having to do with the national security, the observance of health and with fiscal regulations. A secular possession such as that of the Gulf could only have been maintained by the acquiescence of the family of nations; and in the case here at issue it is not that the *consensus gentium* is deduced from a merely passive attitude on the part of the nations, because the diplomatic history of certain Powers shows that for more than half a century they have been seeking to establish rights of their own in the Gulf for purposes of commercial policy; but always on the basis of respect for the ownership and possession which the States have maintained by virtue of their sovereign authority."[56]

46. The Court stated further:

"The foregoing descriptions give an exact idea of how vital are the interests guarded by the Gulf of Fonseca, and, if those interests are of incalculable value in making up the characteristics of an 'historic bay' applicable thereto, there are other factors what determine even more clearly that legal status. These are:

"A. The projected railway that Honduras began and which she will not abandon until this great aspiration of hers shall have been concluded. Over that railway will pass the interoceanic traffic that is to develop the rich and extensive regions of the country. Its terminal stations, with their wharves, etc., will be located very probably on one of the principal islands nearest the coast of the Gulf.

"B. El Salvador, in her turn has under her control a railroad which, starting at the port of La Unión, follows its course through important and rich departments of the Republic to connect with lines entering from Guatemala at the Salvadorean frontier.

"C. The long-projected prolongation of the Chinandega railroad to a point on the Real Estuary on the Gulf of Fonseca to expedite and make more frequent communication on that side with the interior of Nicaragua.

"D. The establishment of a free port decreed by the Salvadorean Government on Meanguera island.

"E. The Gulf is surrounded by various and extensive departments of the three riparian countries. These are of great importance because they are destined to great commercial, industrial and agricultural development; their products, like those of the departments in the interior of those States, must be exported by way of the Gulf of Fonseca, and through that Gulf must come also the increasing importations.

"F. The configuration and other conditions of the Gulf facilitate the enforcement of fiscal laws and regulations and guarantee the full collection of imposts against frauds against the fiscal laws.

"G. The strategic situation of the Gulf and its islands is so advantageous that the riparian States can defend their great interests therein and provide for the defense of their independence and sovereignty.

"*Whereas*: It is clearly deducible from the facts set forth in the preceding paragraphs that the Gulf of Fonseca belongs to the special category of historic bays and is the exclusive property of El Salvador, Honduras and Nicaragua, this on the theory that it combines all the characteristics or conditions that the text writers on international law, the international law institutes and the precedents have prescribed as essential to territorial waters, to wit, secular or immemorial possession accompanied by *animo domini* both peaceful and continuous and by acquiescence on the part of other nations, the special geographical configuration that safeguards so many interests of vital importance to the economic, commercial, agricultural and industrial life of the riparian States and the absolute, indispensable necessity that those States should possess the Gulf as fully as required by those primordial interests and the interest of national defence."[57]

47. By a majority vote, the Court held[58] that the three riparian States were co-owners of the waters of the gulf, "except as to the littoral marine league which is the exclusive property of each". The Court said in this respect:

"The legal status of the Gulf of Fonseca having been recognized by this Court to be that of a historic bay possessed of the characteristics of a closed sea, the three riparian States of El Salvador, Honduras and Nicaragua are, therefore,

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[55] *American Journal of International Law*, vol. 11 (1917), p. 693.

[56] *Ibid.*, pp. 700-701.

[57] *Ibid.*, pp. 704-5.

[58] *Ibid.*, p. 693.

recognized as co-owners of its waters, except as to the littoral marine league which is the exclusive property of each, and with regard to the co-ownership existing between the States here litigant, the Court, in voting on the fourteenth point of the questionnaire, took into account the fact that as to a portion of the non-littoral waters of the Gulf there was an overlapping or confusion of jurisdiction in matters pertaining to inspection for police and fiscal purposes and purposes of national security, and that, as to another portion thereof, it is possible that no such overlapping and confusion takes place. The Court, therefore, has decided that as between El Salvador and Nicaragua co-ownership exists with respect to both portions, since they are both within the Gulf; with the express proviso, however, that the rights pertaining to Honduras as coparcener in those portions are not affected by that decision." [88]

II. International case-law

48. The important decision of the Central American Court of Justice in the case relating to the Gulf of Fonseca has already been mentioned (paras. 44-47 above).

49. Another important case having a bearing on historic bays was the North Atlantic Coast Fisheries Arbitration between the United Kingdom and the United States; the award, dated 7 September 1910, says:

"But the tribunal, while recognizing that conventions and established usage might be considered as the basis for claiming as territorial those bays on this ground might be called historic bays, and that such claims should be held valid in the absence of any principle of international law on the subject. . . ." [89]

While the award mentioned historic bays incidentally, only Dr. Drago, in his dissenting opinion, considered the question of those bays at more length and tried to identify their characteristic features. Dr. Drago's views on the question are given elsewhere in this paper, in the section on opinions of learned authors (*infra*, para. 92).

50. In the Fisheries Case between the United Kingdom and Norway, decided by the International Court of Justice in its judgement of 18 December 1951, the theory of historic bays played an important part. The parties dealt with it both in their written and in their oral statements. And the judgement of the Court, although not treating the theory as a major issue, devotes many pages to it. Nor does the theory receive less prominence in the separate or dissenting opinions of certain judges. In this section, only the relevant portions of the judgement will be cited.

51. The first noteworthy point is that the Court was asked to rule, not on the territoriality of any particular bay or of specific maritime areas, but on a system of delimitation. The system laid down by the Norwegian Royal Decree of 12 July 1935 included in the internal waters of Norway certain sea areas which, in the view of the United Kingdom, were part of the high seas. The issue in dispute between the two parties was whether this system of delimitation was in conformity with the applicable rules of international law. And it was principally by relying on these rules for guidance that the Court endeavoured to resolve the issue. While basing its conclusions on the principles of general international law the Court did not, however, fail to make certain statements concerning the theory of historic rights.

52. In the course of the proceedings, both parties referred to the notion of historic title, but viewing it differently. The judgement, in the recital of facts, mentions this divergence of views.

53. The Norwegian Decree of 12 July 1935 sets out in the preamble the considerations on which its provisions on delimitation are based: [91]

"(1) Well-established national titles of right";

"(2) The geographical conditions prevailing on the Norwegian coasts";

"(3) The safeguard of the vital interests of the inhabitants of the northernmost parts of the country".

The Decree "further relies on the Royal Decrees of 22 February 1812, 16 October 1869, 5 January 1881 and 9 September 1889".

54. Norway put forward the 1935 Decree as the application of a traditional system of delimitation, which that country claimed to be in conformity with international law. Norway did not rely upon history "to justify exceptional rights, to claim areas of sea which the general law would deny"; it invoked history, together with other factors, to justify the way in which it applied the general law. [92]

55. "This conception of an historic title", said the Court, "is in consonance with the Norwegian Government's understanding of the general rules of international law. In its view, these rules of international law take into account the diversity of facts and, therefore, concede that the drawing of base lines must be adapted to the special conditions obtaining in different regions." [93]

56. The United Kingdom also referred to the notion of historic titles, but considered such titles as derogations from general international law. In its opinion, Norway could justify its claim to part of the waters in dispute "on the ground that she has exercised the necessary jurisdiction over them for a long period without opposition from other States, a kind of *possessio longi temporis*, with the result that her jurisdiction over these waters must now be recognized although it constitutes a derogation from the rules in force. Norwegian sovereignty over these waters would constitute an exception, historic titles justifying situations which would otherwise be in conflict with international law". [94]

57. The waters which, in the British view, Norway was entitled to claim on historic grounds, are the subject of Conclusions Nos. 5, 9 (*a*) and 11, and Alternative Conclusion II, presented by the Agent of the United Kingdom Government at the end of his oral reply. The

[88] *Ibid.*, p. 716.

[89] Scott, *Hague Court Reports*, First Series, New York, 1916, p. 185.

[91] *Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951: I.C.J. Reports* (1951), p. 125.

[92] *Ibid.*, p. 133.

[93] *Ibid.*

[94] *Ibid.*, pp. 130-131.

waters in question should, he argued, be regarded either as internal or as territorial waters. The text of these Conclusions is here cited in full: [95]

"(5) That Norway is entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fall within the conception of a bay as defined in international law (see No. (6) below), whether the proper closing line of the indentation is more or less than ten sea miles long.

"(9)(*a*) That Norway is entitled to claim as Norwegian territorial waters, on historic grounds, all the waters of the fjords and sunds which have the character of legal straits.

"(11) That Norway, by reason of her historic title to fjords and sunds (see Nos. (5) and (9)(*a*) above), is entitled to claim, either as internal or as territorial waters, the areas of water lying between the island fringe and the mainland of Norway. In order to determine what areas must be deemed to lie between the island fringe and the mainland, and whether these areas are internal or territorial waters, the principles of Nos. (6), (7), (8) and (9)(*b*) must be applied to indentations in the island fringe and to indentations between the island fringe and the mainland — those areas which lie in indentations having the character of bays, and within the proper closing lines thereof, being deemed to be internal waters; and those areas which lie in indentations having the character of legal straits, and within the proper limits thereof, being deemed to be territorial waters."

[Second Alternative Conclusion] "II. That Norway, by reason of her historic title to fjords and sunds, is entitled to claim as internal waters the areas of water lying between the island fringe and the mainland of Norway. In order to determine what areas must be deemed to lie between the island fringe and the mainland, the principles of Nos. (6) and (7) above must be applied to the indentations in the island fringe and to the indentations between the island fringe and the mainland — those areas which lie in indentations having the character of bays, and within the proper closing lines thereof, being deemed to lie between the island fringe and the mainland."

58. The Court defined "historic waters" in these terms:

"By 'historic waters' are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title." [96]

59. After stressing the special character of the Norwegian coast, the Court noted that:

"in these barren regions the inhabitants of the coastal zone derive their livelihood essentially from fishing". [97]

60. The Court then considered whether the straight baselines method — the distinctive feature of the Norwegian system of delimitation which, as applied to the Norwegian coast, was approved of by the Court — was applicable to certain sea areas not possessing the character of bays. The Court said:

"It has been contended, on behalf of the United Kingdom, that Norway may draw straight lines only across bays. The Court is unable to share this view. If the belt of territorial waters must follow the outer line of the '*skjaergaard*', and if the method of straight baselines must be admitted in certain cases, there is no valid reason to draw them only across bays, as in Eastern Finnmark, and not also to draw them between islands, islets and rocks, across the sea areas separating them, even when such areas do not fall within the conception of a bay. It is sufficient that they should be situated between the island formations of the '*skjaergaard*', *inter fauces terrarum*." [98]

61. The court likewise rejected the contention that the maximum permissible length of straight baselines was ten nautical miles:

"... although the ten-mile rule has been adopted by certain States both in their national law and in their treaties and conventions, and although certain arbitral decisions have applied it as between these States, other States have adopted a different limit. Consequently, the ten-mile rule has not acquired the authority of a general rule of international law." [99]

62. The Court did not look upon the Norwegian system of delimitation as exceptional but as the application of general international law to a specific case:

"Furthermore, apart from any question of limiting the lines to ten miles, it may be that several lines can be envisaged. In such cases the coastal State would seem to be in the best position to appraise the local conditions dictating the selection.

"Consequently, the Court is unable to share the view of the United Kingdom Government, that 'Norway, in the matter of baselines, now claims recognition of an exceptional system'. As will be shown later, all that the Court can see therein is the application of general international law to a specific case." [100]

63. On the other hand, the Court said that the delimitation of sea areas "has always an international aspect"; it cannot be dependent merely upon the will of the coastal State. Although it is true that the coastal State is alone competent to undertake it, it is equally true that the validity of the delimitation with regard to other States depends upon international law. Accordingly, the Court indicated certain basic considerations that "bring to light certain criteria which, though not necessarily precise, can provide courts with an adequate basis for their decisions, which can be adapted to the diverse facts in question". [101]

"Among these considerations, some reference must be made to the close dependence of the territorial sea upon the land domain. It is the land which confers upon the coastal State a right to the waters off its coasts. It follows that while such a State must be allowed the latitude necessary in order to be able to adapt its delimitation to practical needs and local requirements, the drawing of baselines must not depart to any appreciable extent from the general direction of the coast.

"Another fundamental consideration, of particular importance in this case, is the more or less close relationship existing between certain sea areas and the land formations which divide or surround them. The real question raised in the choice of baselines is in effect whether certain sea areas lying within these lines are sufficiently closely linked to the land domain to be subject to the regime of internal waters. This idea, which is at the basis of the determination of the rules relating to bays, should be liberally applied in the case of a coast, the geographical configuration of which is as unusual as that of Norway.

"Finally, there is one consideration not to be overlooked, the scope of which extends beyond purely geographical factors: that of certain economic interests peculiar to a region, the

[95] *Ibid.*, pp. 121-123.

[96] *Ibid.*, p. 130.

[97] *Ibid.*, p. 128.

[98] *Ibid.*, p. 130.

[99] *Ibid.*, p. 131.

[100] *Ibid.*

[101] *Ibid.*, p. 133.

reality and importance of which are clearly evidenced by a long usage." [72]

64. After noting the existence and consolidation of the Norwegian system of delimitation, the origins of which go back to 1812, the Court found "that this system was consistently applied by Norwegian authorities and that it encountered no opposition on the part of other States".

65. The passages in the Court's judgement which deal with the continuity or consistency of the system of delimitation are here cited in full:

"The United Kingdom Government has, however, sought to show that the Norwegian Government has not consistently followed the principles of delimitation which, it claims, form its system, and that it has admitted by implication that some other method would be necessary to comply with international law. The documents to which the Agent of the Government of the United Kingdom principally referred at the hearing on 20 October 1951, relate to the period between 1906 and 1908, the period in which British trawlers made their first appearance off the Norwegian coast, and which, therefore, merits particular attention.

"The United Kingdom Government pointed out that the law of 2 June 1906, which prohibited fishing by foreigners, merely forbade fishing in 'Norwegian territorial waters', and it deduced from the very general character of this reference that no definite system existed. The Court is unable to accept this interpretation, as the object of the law was to renew the prohibition against fishing and not to undertake a precise delimitation of the territorial sea.

"The second document relied upon by the United Kingdom Government is a letter dated 24 March 1908, from the Minister for Foreign Affairs to the Minister of National Defence. The United Kingdom Government thought that this latter indicated an adherence by Norway to the low-water mark rule contrary to the present Norwegian position. This interpretation cannot be accepted; it rests upon a confusion between the low-water mark rule as understood by the United Kingdom, which required that all the sinuosities of the coast line at low tide should be followed, and the general practice of selecting the low-tide mark rather than that of the high tide for measuring the extent of the territorial sea.

"The third document referred to is a Note, dated 11 November 1908, from the Norwegian Minister for Foreign Affairs to the French Chargé d'Affaires at Christiania, in reply to a request for information as to whether Norway had modified the limits of her territorial waters. In it the Minister said: 'Interpreting Norwegian regulations in this matter, whilst at the same time conforming to the general rule of the Law of Nations, this Ministry gave its opinion that the distance from the coast should be measured from the low-water mark and that every inlet not continuously covered by the sea should be reckoned as a starting-point.' The United Kingdom Government argued that by the reference to 'the general rule of the Law of Nations', instead of to its own system of delimitation entailing the use of straight lines, and, furthermore, by its statement that 'every inlet not continuously covered by the sea should be reckoned as a starting-point', the Norwegian Government had completely departed from what it today describes as its system.

"It must be remembered that the request for information to which the Norwegian Government was replying related not to the use of straight lines, but to the breadth of Norwegian territorial waters. The point of the Norwegian Government's reply was that there had been no modification in the Norwegian legislation. Moreover, it is impossible to rely upon a few words taken from a single note to draw the conclusion that the Norwegian Government had abandoned a position which its earlier official documents had clearly indicated.

"The Court considers that too much importance need not be attached to the few uncertainties or contradictions, real or apparent, which the United Kingdom Government claims to have discovered in Norwegian practice. They may be easily understood in the light of the variety of the facts and conditions prevailing in the long period which has elapsed since 1812, and are not such as to modify the conclusions reached by the Court.

"In the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose." [73]

66. And in the passage which follows the Court found that the Norwegian system had not encountered "any objection from foreign States":

"Norway has been in a position to argue without any contradiction that neither the promulgation of her delimitation Decrees in 1869 and in 1889, nor their application, gave rise to any opposition on the part of foreign States. Since, moreover, these Decrees constitute, as has been shown above, the application of a well-defined and uniform system, it is indeed this system itself which would reap the benefit of general toleration, the basis of an historical consolidation which would make it enforceable as against all States.

"The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact. For a period of more than sixty years the United Kingdom Government itself in no way contested it. One cannot indeed consider as raising objections the discussions to which the "Lord Roberts" incident gave rise in 1911, for the controversy which arose in this connexion related to two questions, that of the four-mile limit, and that of Norwegian sovereignty over the Varangerfjord, both of which were unconnected with the position of baselines. It would appear that it was only in its Memorandum of 27 July 1933 that the United Kingdom made a formal and definite protest on this point.

"The United Kingdom Government has argued that the Norwegian system of delimitation was not known to it and that the system therefore lacked the notoriety essential to provide the basis of an historic title enforceable against it. The Court is unable to accept this view. As a coastal State on the North Sea, greatly interested in the fisheries in this area, as a maritime Power traditionally concerned with the law of the sea and concerned particularly to defend the freedom of the seas, the United Kingdom could not have been ignorant of the Decree of 1869 which had at once provoked a request for explanations by the French Government. Nor, knowing of it, could it have been under any misapprehension as to the significance of its terms, which clearly described it as constituting the application of a system. The same observation applies *a fortiori* to the Decree of 1889, relating to the delimitation of Romsdal and Nordmöre, which must have appeared to the United Kingdom as a reiterated manifestation of the Norwegian practice.

"Norway's attitude with regard to the North Sea Fisheries (Police) Convention of 1882 is a further fact which must at once have attracted the attention of Great Britain. There is scarcely any fisheries convention of greater importance to the coastal States of the North Sea or of greater interest to Great Britain. Norway's refusal to adhere to this Convention clearly raised the question of the delimitation of her maritime domain, especially with regard to bays, the question of their delimitation by means of straight lines, of which Norway challenged the

[72] *Ibid.*

[73] *Ibid.*, pp. 137-138.

maximum length adopted in the Convention. Having regard to the fact that, a few years before, the delimitation of Sunnmöre by the 1869 Decree had been presented as an application of the Norwegian system, one cannot avoid the conclusion that, from that time on, all the elements of the problem of Norwegian coastal waters had been clearly stated. The steps subsequently taken by Great Britain to secure Norway's adherence to the Convention clearly show that she was aware of and interested in the question.

"The Court notes that, in respect of a situation which could only be strengthened with the passage of time, the United Kingdom Government refrained from formulating reservations.

"The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom." [74]

67. The Court accordingly arrived at the conclusion:

"... that the method of straight lines, established in the Norwegian system, was imposed by the peculiar geography of the Norwegian coast; that, even before the dispute arose, this method had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of Governments bears witness to the fact that they did not consider it to be contrary to international law". [75]

68. The Court proceeded to apply the principles thus set out to certain sectors of the Norwegian coast. The United Kingdom Government had contended that certain baselines prescribed by the Norwegian Decree of 1935 did not follow the general direction of the coast or that they did not respect the natural connexion existing between certain sea areas and the land formations separating or surrounding them. These objectives related more particularly to two sectors: the sector of Svaerholtnavet and that of Lopphavet.

69. With regard to the former, the Court said:

"... The United Kingdom Government denies that the basin so delimited has the character of a bay. Its argument is founded on a geographical consideration. In its opinion, the calculation of the basin's penetration inland must stop at the tip of the Svaerholt peninsula (Svaerholtklubben). The penetration inland thus obtained being only 11.5 sea miles, as against 38.6 miles of breadth at the entrance, it is alleged that the basin in question does not have the character of a bay. The Court is unable to share this view. It considers that the basin in question must be contemplated in the light of all the geographical factors involved. The fact that a peninsula juts out and forms two wide fjords, the Lakse[fjord and the Porsanger]fjord, cannot deprive the basin of the character of a bay. It is the distances between the disputed baseline and the most inland point of these fjords, fifty and seventy-five sea miles respectively, which must be taken into account in appreciating the proportion between the penetration inland and the width at the mouth. The Court concluded that Svaerholthavet has the character of a bay." [76]

70. Of the sector of Lopphavet, the Court said:

"... The Lopphavet basin constitutes an ill-defined geographic whole. It cannot be regarded as having the character of a bay. It is made up of an extensive area of water dotted with large islands which are separated by inlets that terminate in the various fjords. The baseline has been challenged on the ground that it does not respect the general direction of the coast. It should be observed that, however justified the rule in question may be, it is devoid of any mathematical precision. In order properly to apply the rule, regard must be had for the relation between the deviation complained of and what, according to the terms of the rule, must be regarded as the *general* direction of the coast. Therefore, one cannot confine oneself to examining one sector of the coast alone, except in a case of manifest abuse; nor can one rely on the impression that may be gathered from a large-scale chart of this sector alone. In the case in point, the divergence between the base line and the land formations is not such that it is a distortion of the general direction of the Norwegian coast." [77]

71. The Court then went on to say:

"Even if it were considered that in the sector under review the deviation was too pronounced, it must be pointed out that the Norwegian Government has relied upon an historic title clearly referable to the waters of Lopphavet, namely, the exclusive privilege to fish and hunt whales granted at the end of the 17th century to Lt.-Commander Erich Lorch under a number of licences which show, *inter alia*, that the water situated in the vicinity of the sunken rock of Gjesbaaen or Gjesboene and the fishing grounds pertaining thereto were regarded as falling exclusively within Norwegian sovereignty. But it may be observed that the fishing grounds here referred to are made up of two banks, one of which, the Indre Gjesboene, is situated between the baseline and the limit reserved for fishing, whereas the other, the Ytre Gjesboene, is situated further to seaward and beyond the fishing limit laid down in the 1935 Decree.

"These ancient concessions tend to confirm the Norwegian Government's contention that the fisheries zone reserved before 1812 was in fact much more extensive that the one delimited in 1935. It is suggested that it included all fishing banks from which land was visible, the range of vision being, as is recognized by the United Kingdom Government, the principle of delimitation in force at that time. The Court considers that, although it is not always clear to what specific areas they apply, the historical data produced in support of this contention by the Norwegian Government lend some weight to the idea of survival of traditional rights reserved to the inhabitants of the Kingdom over fishing grounds included in the 1935 delimitation, particularly in the case of Lopphavet. Such rights, founded on the vital needs of the population and attested by very ancient and peaceful usage, may legitimately be taken into account in drawing a line which, moreover, appears to the Court to have been kept within the bounds of what is moderate and reasonable." [78]

72. There remains one further important point to be noted in the Court's judgement: this is the question of the status of a part of the waters of the *skjaergaard*, which the United Kingdom contended should constitute "territorial waters" and not "internal waters". These are, among others, the waters of the navigational route known as the Indreleia. The United Kingdom argued that the waters of this navigational route constituted a strait in the legal sense and, as such, should be treated as territorial waters. The Court observed:

"... that the Indreleia is not a strait at all, but rather a navigational route prepared as such by means of artificial aids to navigation provided by Norway. In these circumstances the Court is unable to accept the views that the Indreleia, for the purposes of the present case, has a status different from that of the other waters included in the *skjaergaard*." [79]

[74] *Ibid.*, pp. 138-139.

[75] *Ibid.*, p. 139.

[76] *Ibid.*, p. 141.

[77] *Ibid.*, pp. 141-142.

[78] *Ibid.*, p. 142.

[79] *Ibid.*, p. 132.

III. Draft international codifications of the rules relating to bays

73. The draft codifications concerning the law of the sea prepared since the end of the nineteenth century by learned societies make specific provision for the bays which coastal States may claim as internal waters. The same is true of the draft codifications prepared under the auspices of the League of Nations. The rules formulated in most of these drafts make allowance for historic bays. They do not contain special clauses dealing with historic bays but, in most cases, mention them incidentally, in the form of an exception to the general rule recommended for ordinary bays. Nevertheless, the language used in the clause containing the exception, which differs from one draft to another, may offer some clue to the approach of the authors of the drafts to the theory of historic bays.

Most of the drafts that mention historic bays contemplate only the case of a bay the coasts of which belong to a single State.

A. *Draft codifications prepared by learned societies*

Institute of International Law

74. At its session held in Paris in March 1894, the Institute of International Law adopted a number of rules concerning the definition and the régime of the territorial sea. In its draft article 3, the Institute recognizes the theory of historic bays by using the terms "continuous usage of long standing" (*usage continu et séculaire*):

"*Article 3.* In the case of bays, the territorial sea follows the sinuosities of the coast, except that it is measured from a straight line drawn across the bay at the place nearest the opening toward the sea, where the distance between the two shores of the bay is twelve nautical miles, unless a continued usage of long standing has sanctioned a greater width."[80]

75. However, in the draft regulations concerning the territorial sea in time of peace, adopted by the Institute of International Law at its Stockholm session in August 1928, the theory of historic bays is expressed by the words "international usage":

"*Article 3.* The territorial sea is measured . . . ; in the case of bays, from a straight line drawn across the bay at the place nearest the opening toward the sea, where the distance between the two shores of the bay is ten nautical miles, unless international usage has sanctioned a greater width.

"In the case of bays the coasts of which belong to two or more States, the territorial sea follows the sinuosities of the coast."[81]

76. The first draft of this clause had contained the expression "unchallenged (*incontesté*) international usage". During the debate preceding the adoption of the article, an amendment was proposed for the deletion of the word "unchallenged". The amendment was carried and the word in question was dropped.[82]

[80] *Annuaire de l'Institut de Droit International*, vol. 13 (1894-95), p. 329.

[81] *Ibid.*, vol. 34, Stockholm session, August, 1928, p. 755.

[82] *Ibid.*, pp. 641-642.

International Law Association

77. The draft rules relating to territorial waters, adopted by the International Law Association at its Brussels session in 1895, contain an article 3 which reproduces textually the corresponding clause of the 1894 draft of the Institute of International Law (except that the width of twelve miles is replaced by ten miles).[83]

78. The draft convention submitted in 1926 to the Association's thirty-fourth conference by the committee appointed by the Executive Council to consider, *inter alia*, maritime jurisdiction in time of peace, uses the expression "established usage":

"*Article 7.* With regard to bays and gulfs, territorial waters shall follow the sinuosities of the coast, unless an established usage has sanctioned a greater limit."[84]

79. The draft convention, as amended by the Conference, adopts the same expression, adding the terms "generally recognized by the nations". In addition, it introduces the idea of "occupation" into the saving clause:

"*Article 7.* With regard to bays and gulfs, territorial waters shall follow the sinuosities of the coast, unless an occupation or an established usage generally recognized by the nations has sanctioned a greater limit."[85]

American Institute of International Law

80. Project No. 10, prepared in 1925 by the Commission set up by the American Institute of International Law for the codification of American international law, embodies the theory of historic bays. Article 6 uses the expression "continued and well-established usage":

"*Article 6.* For bays extending into the territory of a single American Republic the territorial sea follows the sinuosities of the coast, except that it is measured from a straight line drawn across the bay at the point nearest the opening into the sea where the two coasts of the bay are separated by a distance of —— marine miles, unless a greater width shall have been sanctioned by continued and well-established usage."[86]

81. The project submitted in 1933 to the Seventh International Conference of American States by the American Institute of International Law expresses the theory of historic bays in the following terms:

"*Article 11.* There are excepted from the provisions of the two foregoing articles, in regard to limits and measure, those bays or estuaries called historic, *viz.* those over which the coastal State or States, or their constituents, have traditionally exercised and maintained their sovereign ownership, either by provisions of internal legislation and jurisdiction, or by deeds or writs of the authorities."[87]

[83] The International Law Association, *Report of the Seventeenth Conference*, 1895, p. 115.

[84] *Ibid.*, *Report of the Thirty-fourth Conference*, 1926, p. 43.

[85] *Ibid.*, p. 102.

[86] *American Journal of International Law*, 1926, Special Supplement, vol. 20, p. 318.

[87] "Project on the Territorial Sea", submitted to the Seventh International Conference of American States, 3 December 1933 (Document for the Use of Delegates, No. 4, pp. 38-41); quoted in *I.C.J. Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951*, vol. III, Norwegian Reply, p. 455; Bustamante, *The Territorial Sea*, 1930, pp. 142-143.

(Article 16 of the project provides that the same rule is to apply to straits).

Kokusaiho-Gakukwai
(Japanese International Law Society)

82. A draft codification adopted in 1926 by Kokusaiho-Gakukwai (The Japanese International Law Society) employs the expression "immemorial usage":

"*Article 2.* In the case of bays and gulfs, the coasts of which belong to the same State, the littoral waters extend seawards at right angles from a straight line drawn across the bay or gulf at the first point nearest the open sea where the width does not exceed ten marine miles, unless a greater width has been established by immemorial usage."[88]

Harvard Research

83. The Harvard Research draft on territorial waters employs the expression "established usage":

"*Article 22.* The provisions of this convention relating to the extent of territorial waters do not preclude the delimitation of territorial waters in particular areas in accordance with established usage."[89]

84. It will be noticed that this article is general in scope, and does not concern bays only. The comment on the article states:

"This article seems necessary because of historic claims made by certain States and acquiesced in by other States with reference to certain bodies or with reference to particular areas of water. The simplest case is that of an historic bay such as Chesapeake Bay or Conception Bay. It seems desirable that the convention should not interfere with historic claims of this kind based upon usage which has been established before this convention comes into force. Such claims may enlarge or diminish the extent of territorial waters. Similarly it seems desirable that it should be recognized that usages with respect to other areas may become established in the future and that well-founded claims may be based upon such established usage.

"A State may have claimed for all of its marginal seas a different measure from that which is established by this convention. Some States for instance have for many years claimed four miles as the limit of their marginal seas. This article is not designed to protect such a general claim made by a State with reference to all of its marginal seas. However, in a particular area an established usage might be proved which would entitle a State to include a wider area in its territorial waters than three miles of marginal sea."

B. *Draft codifications prepared under the auspices of the League of Nations*

1. *Committee of Experts for the Progressive Codification of International Law*[90]

(*a*) *Draft convention prepared by Mr. Schücking*

85. This draft uses the same terms as the 1894 draft of the Institute of International Law:

"*Article 4. Bays.* In the case of bays which are bordered by the territory of a single State, the territorial sea shall follow the sinuosities of the coast, except that it shall be measured from a straight line drawn across the bay at the part nearest to the opening towards the sea, where the distance between the two shores of the bay is twelve marine miles, unless a greater distance has been established by continuous and immemorial usage. . . ."[91]

(*b*) *Draft convention amended by Mr. Schücking in consequence of the discussion in the Committee of Experts*

86. The text of article 4 of the amended draft is similar to that of the original draft prepared by the rapporteur, except that the width of twelve miles is replaced by ten miles. In addition, the amended text of article 4 expressly provides that the waters of the bays defined in that article "are to be assimilated to internal waters".[92]

2. *Conference on the Codification of International Law* (1930)

(*a*) *Preparatory Committee*[93]

87. Basis of Discussion No. 8 prepared by this Committee was worded as follows:

"The belt of territorial waters shall be measured from a straight line drawn across the entrance of a bay, whatever its breadth may be, if by usage the bay is subject to the exclusive authority of the coastal State; the onus of proving such usage is upon the coastal State."[94]

The above provision relates only to historic bays, Basis of Discussion No. 7 being concerned with ordinary bays.[95]

[88] J. Mochot, *Régime des baies et des golfes en droit international*, Paris, 1938, p. 144.

[89] *Research in International Law, Harvard Law School (Nationality, Responsibility of States, Territorial Waters)*, 1929, p. 288.

[90] This Committee was convened under a resolution adopted by the Assembly of the League of Nations on 22 September 1924.

At its second session in January 1926, the Committee adopted seven questionnaires on the subjects which, in its opinion, were sufficiently ripe for international regulation. Questionnaire No. 2 dealt with territorial waters. On 29 January 1926, the Committee circulated to Governments for their comments a Sub-Committee's report on territorial waters (questionnaire No. 2). This report included, *inter alia* (1) a memorandum by Mr. Schücking, rapporteur of the Sub-Committee, with a draft convention annexed; and (2) the draft convention amended by Mr. Schücking in consequence of the discussion in the Committee of Experts.

[91] Ser. L.o.N.P. 1927, v. 1, p. 58.

[92] *Ibid.*, p. 72.

[93] This Committee was appointed under a resolution adopted by the Council of the League of Nations on 28 September 1927, with the terms of reference contained in a resolution of 27 September 1927 of the Assembly. At its session held at Geneva from 28 January to 17 February 1929, the Preparatory Committee examined the replies of Governments to the request for information upon the three questions on the programme of the proposed Conference: territorial waters, etc. As a result of that examination, the Committee drew up bases of discussion for the use of the Conference.

[94] Ser. L.o.N.P. 1929, v. 2, p. 45.

[95] Basis of Discussion No. 7: "In the case of bays the coasts of which belong to a single State, the belt of territorial waters shall be measured from a straight line drawn across the opening of the bay. If the opening of the bay is more than ten miles wide, the line shall be drawn at the nearest point to the entrance at which the opening does not exceed ten miles." (*Ibid.*)

88. In its observation, the Preparatory Committee noted that:

"The government replies appear to indicate that agreement can easily be reached to extend the same method of calculation to bays of a greater breadth than ten miles where the coastal State is in a position to prove the existence of a usage to that effect (historic bays)."[96]

89. Bases of Discussion Nos. 7 and 8 concern bays the coasts of which belong to a single State. Basis of Discussion No. 9 concerns bays the coasts of which belong to two or more States:

"If two or more States touch the coast of a bay or estuary of which the opening does not exceed ten miles, the territorial waters of each coastal State are measured from the line of low-water mark along the coast."[97]

(b) Report of the Second Committee

90. In its report to the Conference, the Second Committee (Mr. François, Rapporteur), which had been appointed to study the Bases of Discussion drawn up by the Preparatory Committee, said:

"One difficulty which the Committee encountered in the course of its examination of several points of its agenda was that the establishment of general rules with regard to the belt of the territorial sea would, in theory at any rate, effect an inevitable change in the existing status of certain areas of water. In this connexion, it is almost unnecessary to mention the bays known as 'historic bays'; and the problem is besides by no means confined to bays, but arises in the case of other areas of water also. The work of codification could not affect any rights which States may possess over certain parts of their coastal sea, and nothing, therefore, either in this report or in its appendices, can be open to that interpretation."[98]

IV. Opinions of learned authors and of Governments

A. *Opinions of learned authors*

91. The preceding section explained how the subject of historic bays has been treated by expert bodies. The present section will cite opinions expressed on historic bays by selected authors either in personal publications, or in connexion with judicial decisions or in the course of collective efforts at codification. As far as possible, only those opinions will be cited which reflect approval or disapproval of the theory of historic bays. The views of authors on other aspects of the problem will be taken into account in part II of this memorandum.

92. The authors cited are listed in the chronological order of the publication of their works.

Vattel (1758):[99]

"All that we have said regarding the parts of the sea adjoining the coast is true more particularly and *a fortiori* of roadsteads, bays, and straits, which lend themselves even more easily to occupation and are of greater importance to the country's safety. I am only speaking, however, of bays and straits which are small in size, and not of those large areas of the sea that are sometimes so described, such as Hudson Bay or the Straits of Magellan, where no *imperium*, much less a right of ownership, is exercisable. A bay which can be defended at its entrance can be occupied and subjected to the Laws of the Sovereign; indeed, it should be so occupied, for any such place is much more likely to attract the trespasser than a coast open to the winds and the turbulence of the waves."

Kent (1878):[100]

"It is difficult to draw any precise or determinate conclusion, amidst the variety of opinions, as to the distance to which a State may lawfully extend its exclusive dominion over the sea adjoining its territories, and beyond those portions of the sea which are embraced by harbours, gulfs, bays and estuaries, and over which its jurisdiction unquestionably extends. . . . The executive authority of that country [the United States], in 1793, considered the whole of Delaware Bay to be within its territorial jurisdiction; resting its claims upon those authorities which admit that gulfs, channels, and arms of the sea belong to the people with whose lands they are encompassed; and it was intimated that the law of nations would justify the United States in attaching to their coasts an extent into the sea, beyond the reach of cannon-shot.

"Considering the great extent of the line of the American coasts, their writers contend that they have a right to claim, for fiscal and defensive regulations, a liberal extension of maritime jurisdiction; nor would it be unreasonable, as they say, to assume, for domestic purposes connected with their safety and welfare, the control of the waters on their coasts, though included within lines stretching from quite distant headlands; as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauck Point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi. It is certain that their Government would be disposed to view with some uneasiness and sensibility, in the case of war between other maritime Powers, the use of the waters of their coast, far beyond the reach of cannon-shot, as cruising ground for belligerent purposes. In 1793 the Government of the United States thought they were entitled, in reason, to as broad a margin of protected navigation, as any nation whatever, though at that time they did not positively insist upon more than the distance of a marine league from the sea shores; and, in 1806, they thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well-defined path of the Gulf Stream, to expect an immunity from belligerent warfare, for the space between that limit and the American shore. It ought, at least, to be insisted, they urged, that the extent of the neutral immunity should correspond with the claims maintained by Great Britain around her own territory, and that no belligerent right should be exercised within 'the chambers formed by headlands, or any where at sea within the distance of four leagues, or from a right line from one headland to another.'"

R. Phillimore (1879):[101]

"Besides the rights of property and jurisdiction within the limit of cannon-shot from the shore, there are certain portions of the sea which, though they exceed this verge, may, under special circumstances, be prescribed for. Maritime territorial rights extend, as a general rule, over arms of the sea, bays, gulfs, estuaries which are enclosed but not entirely surrounded by lands belonging to one and the same State . . ."

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[96] *Ibid.*

[97] *Ibid.*

[98] Ser. L.o.N.P. 1930.V.14, p. 125.

[99] *Le Droit des Gens*, 1758, Carnegie Institution of Washington, 1916, p. 251.

[100] *Kent's Commentary*, 2nd ed. (1878), pp. 100-102.

[101] *Commentaries upon International Law*, vol. I, 3rd ed. 1879, p. 284.

Hall (1880):[102]

"It seems to be generally thought that straits are subject to the same rule as the open sea; so that when they are more than six miles wide the space in the centre which lies outside the limit of a marine league is free, and that when they are less than six miles wide they are wholly within the territory of the State or States to which their shores belong. This doctrine however is scarcely consistent with the view, which is also generally taken, that gulfs, of a greater or less size in the opinion of different writers, when running into the territory of a single State, can be included within its territorial waters; perhaps also it is not in harmony with the actual practice with respect to waters of the latter kind. . . . In principle it is difficult to separate gulfs and straits from one another; the reason which is given for conceding a larger right of appropriation in the case of the former than of the latter, *viz.*, that all nations are interested in the freedom of straits, being meaningless unless it be granted that the State can prohibit the innocent navigation of such of its territorial waters as vessels may pass over going from one foreign place to another. If that could be done, it might be necessary to impose a special restriction upon the appropriation of waters which by their position are likely to be so used. Such however not being the case in fact, it is the power of control which has alone to be looked to; and the power of exercising control is not less when water of a given breadth is terminated at both ends by water than when it merely runs into the land. Of practice there is a curious deficiency, and there is nothing to show how many of the claims to gulfs and bays which still find their place in the books are more than nominally alive. It is scarcely possible to say anything more definite than that, while on the one hand it may be doubted whether any State would now seriously assert the right of property over broad straits or gulfs of considerable size and wide entrance, there is on the other hand nothing in the conditions of valid maritime occupation to prevent the establishment of a claim either to basins of considerable area, if approached by narrow entrances such as those of the Zuyder Zee, or to large gulfs which, in proportion to the width of their mouth, run deeply into the land, even when so large as the Bay of Fundy, or still more to small bays, such as that of Cancale."

A. Chrétien (1893):[103]

"I only recognize as integral parts of the maritime territory of the State ports, harbours and roadsteads, bays and small gulfs which penetrate into the land domain and man-made waterways which run across it and connect two seas.

. . .

"In cases where the entrance to a gulf or bay is sufficiently narrow to be wholly commanded by the cannon of the State holding the two shores, and where, in addition, the size of the bay or gulf is not considerable, the waters therein should be assimilated to ports, harbours and roadsteads indented into the land territory of a State. There are the same reasons for regarding them as subject to the complete and absolute sovereignty of the coastal State. This applies to the Bay of Brest in France, to Jade Bay, the Frisches Haff and the Kurisches Haff in Germany, to the Zuyder Zee in Holland, to the Danish and Norwegian fjords, and to other similar indentations.

"Gulfs and bays of large size should be treated either as non-closed internal seas or as open seas, depending on whether the width of the entrance is smaller or larger than twice the traditional range of cannon, that is to say six nautical miles of sixty to a degree. Consequently, the Gulf of Mexico, the Bay of Biscay and the Gulf of Lions are open seas. The application of these principles to the Gulfs of Bothnia and of Finland in Europe and to Delaware, Hudson and Conception Bays in America would normally lead to the conclusion that they also are free waters. This solution, however, is not accepted by the Russian, American and English Governments, which declare them to be wholly territorial waters."

Barclay (1894-95):[104]

In explaining the exception contained in the final clause of article 3 of the 1894 draft of the Institute of International Law (*supra*, para. 74) this author states:

". . . Bays are generally not used for navigation between countries other than the coastal countries. Headlands keep them outside the open routes, separated from the high seas by a clearly defined line. There are, however, many bays which are more than ten or even sixteen miles wide and yet must necessarily be regarded by reason of their position, as under the absolute sovereignty of the coastal State. This is true of the firths of Scotland. The Bay of Cancale is seventeen miles wide; in Chaleur Bay, in Canada, the width is sixteen miles. All these bays are regarded as under the exclusive dominion of the coastal State. It is thus necessary to establish the principle that the status of a bay differs from that of the territorial sea proper."

A. Rivier (1896):[105]

". . . the portions of the sea, or the seas, which, by reason of their configuration, are called gulfs or bays, are territorial if they border on the territory of a single State and their entrance is sufficiently narrow to be wholly within the range of the coastal batteries. But where there are several coastal States, the gulf is an open sea regardless of its width at the entrance. A gulf is also an open sea, even if it is surrounded by a single State, if its entrance is too wide to be dominated from the coast. This is generally admitted to be the case where the distance between the two shores exceeds ten nautical miles.

"Territorial gulfs are governed by the principles of law which also govern internal seas not designated as gulfs. The littoral sea begins where the territorial gulf ends.

. . .

"The Frisches Haff and the Kurisches Haff are German, as are the Gulf of Stettin and Jade Bay. The Gulf of Riga is Russian. England has claimed territorial jurisdiction over Conception Bay (Newfoundland) and the Bay of Fundy (Canada) . . ."

"The Gulf of Bothnia is open sea, as are also the Gulf of Finland — although Russia claims the latter to be Russian — and Delaware and Hudson Bays, despite the contrary opinion of the American and the English. The Behring Sea is open sea."

Drago (1910):[106]

In his dissenting opinion in the North Atlantic Coast Fisheries Arbitration between Great Britain and the United States (1910) (*supra*, para. 49), Dr. Drago states:

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[102] *International Law*, 1880, pp. 127-129.

[103] *Principes de Droit international public*, Paris, 1893, pp. 100-103.

[104] *Annuaire de l'Institut de droit international*, vol. 13 (1894-95) p. 147.

[105] *Principes du Droit des Gens*, vol. 1, Paris (1896), pp. 154-155.

[106] Scott, *op. cit.*, pp. 199-200.

"So it may be safely asserted that a certain class of bays, which might be properly called the historical bays, such as Chesapeake Bay and Delaware Bay in North America and the great estuary of the River Plate in South America, form a class distinct and apart and undoubtedly belong to the littoral country, whatever be their depth of penetration and the width of their mouths, when such country has asserted its sovereignty over them, and particular circumstances such as geographical configuration, immemorial usage and above all, the requirements of self-defence, justify such a pretension. The rights of Great Britain over the bays of Conception, Chaleur and Miramichi are of this description..."

Epitacio Pessôa (1910): [107]

This author's draft code of public international law, submitted to the Commission of Jurists of Rio de Janeiro in 1910, admits the theory of historic bays in these terms:

"Article 54. In gulfs and bays, the territorial sea shall be measured from a straight line drawn between the two extreme points at the narrowest part of the mouth; if this part has a width exceeding ten miles, the measurement shall be taken in conformity with the preceding article and with due regard to acquired rights."

Westlake (1910): [108]

"But although this is the general rule, it often meets with an exception in the case of bays which penetrate deep into the land and are called gulfs. Many of these are recognized by immemorial usage as territorial seas of the States into which they penetrate, notwithstanding that their entrance is wider than the general rule for bays would give as a limit to such appropriation. Examples are the Bay of Conception in Newfoundland, penetrating forty miles into the land and being fifteen miles in average breadth, which is wholly British, Chesapeake and Delaware Bays, which belong to the United States, and the Bay of Cancale, seventeen miles wide, which belongs to France. Similar exceptions to those admitted for gulfs were formerly claimed for many comparatively shallow bays of great width, for example those on the coast of England from Orfordness to the North Foreland and from Beachy Head to Dunnose, which, together with the whole of the Bristol Channel and various other stretches of sea bordering on the British Isles were claimed under the name of the King's Chambers. But it is only in the case of a true gulf that the possibility of occupation can be so real as to furnish a valid ground for the assumption of sovereignty, and even in that case the geographical features which may warrant the assumption are too incapable of exact definition to allow of the claim being brought to any other test than that of accepted usage. It is sometimes said and may be historically true that all sovereignty now enjoyed over the littoral sea or certain gulfs is the remnant of the vast claims which, as we have seen, were once made to sovereignty over the open sea and which it is held have been gradually reduced to a tolerable measure through such intermediate stages as that of the King's Chambers; and the impossibility of putting the claim to gulfs in a definite general form may be thought favourable to that view. None the less however the rights which are now admitted stand on a basis clear and solid enough to distinguish and support them."

Fauchille (1925): [109]

"If the practice of many States thus seems to conflict with the principle, which today seems to predominate among the authorities and in treaty-made law, that the only territorial gulfs and bays are those which have an entrance not exceeding ten miles in width, many authors and the statutes of some States recognize that this principle should suffer at least one exception. According to these, there exist certain gulfs and bays which, despite their great width, must be declared under the sovereignty of the State which surrounds them. These gulfs and bays are what are called *historic* or *vital* bays, as distinct from others which are referred to as *common* or *ordinary* bays. What exactly is the correct definition of a historic or vital bay? It is one of the large gulfs or bays the territorial character of which has been recognized by long-established usage and undisputed custom..."

P. C. Jessup (1927): [110]

"Turning to the second point raised above, — namely, prescriptive rights, — one is forced to the rather unsatisfactory conclusion that for large bays each case should be determined on its own merits and that the status of any particular bay more than six miles wide rests upon the success with which the littoral State has succeeded in pressing its claim to entire jurisdiction over that body of water. It will appear below that this general theory in its specific application has been extremely useful and there is no doubt that in so far as already established, it can not be discarded. Where the mouth of a bay is not of very great extent but the bay itself opens up widely well within the body of the country, — as is the case with the Chesapeake and Delaware bays of the United States, — it seems highly proper that the littoral State should have complete authority over the water so lying within its territory. To make such a principle generally useful for universal application, it would practically be necessary for the nations of the world to meet in conference with the assistance of geographic experts and to make a list of all the bays of the world which were to be considered entirely the property of a single country. There seems to be little chance that such a conference could be arranged or that its labours would be successful if it were to be convoked. Holding in abeyance, then, the general rule which is to govern all bays, it must be admitted that there are certain bodies of water to which individual States by general acquiescence or long usage have acquired the absolute right or title."

The same author states in a later passage:

"It is believed that it will appear from a study of this material that no established rule of international law exists as to bays except to the effect that bays not more than six miles wide are deemed territorial waters as well as those to which a nation has established a prescriptive claim. Such a prescriptive claim may be established over bays of great extent; the legality of the claim is to be measured, not by the size of the area affected, but by the definiteness and duration of the assertion and the acquiescence of foreign Powers. The evidence of international practice and usage does not indicate that a claim to a large bay is illegal."

Antonio Sanchez de Bustamante y Sirven (1930): [111]

"A solution is required for the problem of historic bays, by virtue of which the coastal State is recognized the right over them, whatever the extent of their openings. There are many in this case, both great Powers and countries less strong or materially not very great. As is natural, there is a tendency to convert into a *de jure* rule this *de facto* situation."

[107] *A Codificação Americana do Direito Internacional*, vol. III, p. 36.

[108] *International Law*, 2nd ed., Cambridge, 1910, pp. 191-192.

[109] *Traité de droit international public*, vol. I, Paris, 1925, p. 380.

[110] *The Law of Territorial Waters and Maritime Jurisdiction*, 1927, pp. 362-363, 382.

[111] *The Territorial Sea*, New York, 1930, p. 99.

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Gidel (1930-1934): [112]

"The theory of 'historic waters', whatever name it is given, is a necessary theory: in the delimitation of maritime areas, it acts as a sort of safety valve; its rejection would mean the end of all possibility of devising general rules concerning this branch of the public international law of the sea."

G. Scelle (1946-1947): [113]

"Without rejecting the automatic system altogether, Governments have always made a reservation regarding 'historic bays', which are the widest and of the greatest importance to their interests. They contend that these maritime areas which they have always claimed as reserved for their exclusive use and which are, in fact, closed to common traffic by an immemorial usage accepted by other States should be regarded not only as territorial waters but as internal waters. According to this view, then, the claim rests on a form of prescription.

"We believe that there are valid grounds for recognizing prescription as a mode of acquiring rights in international law. Indeed, we think that in the international system prescription is even more fundamental than in municipal systems, inasmuch as it is very generally recognized that prolonged possession of control produces effects in law. In this, as in all primitive legal systems, it is the *occupation* that lies at the root of the title. The essential difference between international law and municipal law in this respect is that in the former the period of prescription is indeterminate and is governed in each case by the test of 'reasonableness'. In any event, the onus is on the claimant State to prove its claim by showing 'immemorial' usage and 'acceptance', at least by implication, as well as the absence of any suspension or interruption."

Pitt-Cobbett (1947): [114]

"Gulfs and bays running into the territory of a single State are also commonly regarded as 'territorial waters' and hence as subject to the sovereignty and jurisdiction of the territorial Power. It is universally admitted that this is so, if the width of the gulf or bay at its point of actual junction with the open sea does not exceed six miles. The North Sea Convention of 1882, already considered, extends this to ten miles. There are, however, territorial bays and gulfs whose entrance largely exceeds this limit. Thus, as we have seen, Conception Bay, with an entrance twenty miles wide, was held to be part of British territory, and Hudson Bay, with an entrance of fifty miles, is also claimed as territorial water by Great Britain. So, too, the United States include in their 'territorial waters' Chesapeake Bay, the entrance to which is twelve miles from headland to headland; Delaware Bay, which is eighteen miles wide; and Cape Cod Bay, which is thirty-two miles wide; as well as other inlets of a similar kind. France, for special reasons, claims the Bay of Cancale, the entrance to which is seventeen miles in width. Norway claims the Varanger Fjord, with an entrance of thirty-two miles, as territorial waters. Such claims would probably be admitted by other States, subject to the body of water in question exhibiting a well marked configuration as a gulf or bay; and perhaps subject also to such claims being confirmed by prescription and acquiescence. But it would not extend to a long curvature of the coast with an open face; or to claims such as those formerly made by the Crown in England as regards the 'Kings Chambers'; or to a claim such as that put forward by the United States in the Behring Sea controversy. So far as such bodies of water are rightly regarded as territorial, they will be subject alike to the sovereignty and jurisdiction of the territorial Power to the same extent and for the same purposes as those already indicated in the case of the littoral or marginal sea."

Higgins and Colombos (1952): [115]

"...The best rule appears to be that in the case of bays bounded by the territory of one and the same State, the ordinary distance of territorial waters should be generally applied and therefore a limit of six marine miles should be recognized to the littoral State. This rule is subject to the exception that on historical or prescriptive grounds, or for reasons based on the special characteristics of a bay, the territorial State is entitled to claim a wider belt of marginal waters, provided that it can show affirmatively that such a claim has been accepted expressly or tacitly by the great majority of other nations."

M. Bourquin (1952): [116]

"...But we should note immediately that it would never be possible to accept it [the ten-mile rule] without qualifying it by important exceptions. Its rigid application would so seriously upset the existing situation that it cannot even be contemplated. The number of bays the opening of which exceeds ten miles and which are nevertheless wholly within the internal waters of the coastal State is considerable. Unless we wish to accuse the States to which they belong of infringing the rules of international law, we must therefore validate their claims by recognizing and exceptional rule."

A. N. Nikolaev (1954): [117]

"In areas containing internal maritime waters or other national waters, the territorial sea is measured from the outer limit of those waters. The internal waters of the USSR include the Sea of Azov, the Gulf of Riga, the White Sea (to the south of a straight line drawn from Cape Svyatoy Nos to Cape Kanin Nos) and Cheskaya Bay (south of a line going from Cape Mikulino to Cape Svyatoy Nos).

"The author of this work is in full agreement with the Soviet scholars who regard as 'historic' and subject to the *régime* of the internal waters of the USSR the seas which form bays in the Siberian coast: the Sea of Kara, the Laptev Sea, the East Siberian Sea and the Chukchi Sea. Many centuries were required by Russian navigators to establish mastery over these seas, which now constitute a national waterway of the Soviet State. Through these seas passes the northern maritime route from Murmansk and Archangel to Vladivostok, which was only opened through the prodigious efforts of our heroic Soviet people. In this connexion, we should also recall the judgement delivered on 18 December 1951 by the International Court of Justice in the dispute between the United Kingdom and Norway: this judgement recognizes that the maritime route of Indreleia, which follows the Norwegian coast and was only rendered navigable by special work executed by Norway, forms part of Norwegian internal waters."

Oppenheim (1955): [118]

"Such gulfs and bays as are enclosed by the land of one and the same littoral State and have an entrance from the sea not

[112] *Op. cit.*, p. 651.

[113] *Droit international public*, 2nd ed., Paris, 1946-47, pp. 435-436.

[114] *Cases on International Law*, 6th ed., 1947, p. 158.

[115] Higgins and Colombos, *The International Law of the Sea*, London, 1943, p. 112. (French text published in 1952.)

[116] *Les baies historiques, Mélanges Georges Sauser-Hall*, 1952, p. 38.

[117] *Problema territorialnykh vod v mezhdunarodnom prave* (1954) pp. 207-208.

[118] *International Law*, 8th ed., 1955, pp. 505-508.

more than six miles wide are certainly territorial; those on the other hand, that have an entrance too wide to be commanded by coast batteries erected on one or both sides of it, even though enclosed by one and the same littoral State, are certainly not territorial. These two propositions may safely be maintained . . .

"Gulfs and bays surrounded by the land of one and the same littoral State whose entrance is so wide that it cannot be commanded by coast batteries, and, further, as a rule,[1] all gulfs and bays enclosed by the land of more than one littoral State, however narrow their entrance may be, are non-territorial. They[2] are parts of the open sea, the marginal belt inside the gulfs and bays excepted. They can never be appropriated; . . ."

[1] "For an exception to the rule, see the next note as to the Gulf of Fonseca."

[2] "... is not uncontested. A few writers — see, for instance, Twiss, i, sec. 181 — assert that narrow gulfs and bays surrounded by the land of two *different* States are territorial, the central line dividing the territorial portions. However, the majority of writers do not accept this opinion, and it would seem that the practice of States likewise rejects it, except in the case of such bays as possess the characteristics of a closed sea. Thus, in the case of *San Salvador v. Nicaragua*, the International Court of the Central American Republics (*A.J.*, 11 (1917) pp. 693, 706-717) decided in 1917 that, taking into consideration the geographical and historical conditions as well as its situation, extent, and configuration, the Gulf of Fonseca must be regarded as 'an historic bay possessed of the characteristics of a closed sea', and that it therefore was part of the territories of San Salvador, Honduras and Nicaragua. The decision of this Court has, of course, only force with regard to the three Central American States concerned; but the United States acknowledges the territorial character of this Gulf. The attitude of other States is not known.

"As regards the Bay of Fundy, see the *Schooner Washington*, British-American Claims Commission, 1853-1856. Report of Decisions, page 170; Scott, *Cases*, p. 229."

G. Balladore Pallieri (1956):[110]

"As a further exception [to the foregoing principle], some States have maintained or acquired sovereignty of certain bays known as 'historic' bays. These are often quite spacious bays, the mouth being sometimes tens of miles wide, which certainly cannot be considered as part of the territorial sea on the basis of the rules governing that sea which will be set out hereunder. Claims made by States to sovereignty over such bays have thus a totally different basis and must be considered as a last and somewhat pale remnant of the ancient claim to sovereignty over the high seas. The legal basis of each of these claims to a 'historic' bay is constituted by continued usage with the explicit or implicit consent of the members of the international community. As we shall soon see, however, these are exceptional departures which do not in any way detract from the validity of the general principle [that the sea cannot form the subject of an act of appropriation]. Furthermore, these exceptions are progressively disappearing . . . At present, only the following maritime areas appear to remain subject to sovereignty as an exception to the general principle: Conception and Chaleur Bays (Canada); Chesapeake and Delaware Bays, Monterey Bay and Long Island Sound (United States of America); the Bays of Fundy and Miramichi; Cancale or Granville Bay; the Bristol Channel (United Kingdom); Vestfjord (Norway); the Gulf of Tunis (Tunisia); the Gulf of Fonseca (Costa Rica, Honduras, Nicaragua and El Salvador); and the Zuyder Zee (Netherlands). In addition, the International Court has declared (judgement of 18 December 1951) that, under a recently established usage, Norway is authorized to measure its territorial sea from a baseline which is different from the normal baseline and by virtue of which it has more extensive sovereign rights over maritime areas."

[110] *Diritto Internazionale Pubblico*, 7th ed. (revised) (1956), pp. 377-378.

B. *Opinions of Governments*

93. Certain Governments expressed their opinion on the subject of historic bays in their replies to the list of points prepared by the Preparatory Committee of the Codification Conference of 1930 (*supra*, para. 87):

Australia:[120]

"There are certain historic bays whose width exceeds six or even ten miles which are regarded by general acquiescence as territorial waters. In these cases, the coastal belt of territorial waters is measured from a baseline drawn across the bay at the point so recognized as being the limits of national territory. In the case of bays whose coasts belong to two or more States, territorial waters should be measured from mean low-water spring tide and follow the sinuosities of the coast."

Belgium:[121]

"Any claim by a State to a breadth of territorial waters greater than that agreed upon in an international convention could only be accepted if justified by undisputed international usage based on a special geographical configuration."

Canada:[122]

"In the case of bays where the distance from headland to headland is more than ten miles but the bay itself cannot be entered without traversing territorial waters, the waters of such bays shall be national waters.

"In the case of bays where the distance from headland to headland is more than ten miles and the bay can be entered without traversing territorial waters, the base line is a straight line drawn across the bay at the place where the entrance first narrows to ten miles.

"An exception should be made in the case of bays which, for historic or geographic reasons, are considered as part of the inland waters of the coastal State. Here the base line is drawn from headland to headland."

France:[123]

"Granville Bay is recognized to consist of territorial waters by the Fisheries Convention of 2 August 1839, concluded with Great Britain (Article 1), and by Article 2 of the Fisheries Regulations concluded on 24 May 1843 with Great Britain."

Germany:[124]

"As regards 'historic bays', it would seem right in principle to require the coastal State making such a claim in respect of bays exceeding six nautical miles in width to prove that the bay has acquired the status of 'inland waters' of the coastal State through long usage generally recognized by other States."

Great Britain:[125]

"By general acquiescense, certain historic bays have been recognized as forming part of the national territory, even though their width exceeds that indicated in the earlier part of the

[120] See L.o.N.P. 1929.V.2, p. 117.

[121] *Ibid.*, p. 120.

[122] *Ibid.*, Supplement (*a*), p. 2.

[123] *Ibid.*, p. 160.

[124] *Ibid.*, p. 111.

[125] *Ibid.*, p. 163.

answer on this point. In the case of such bays, the territorial waters are measured from a base line passing across the bay at the place recognized as forming the limits of the national territory."

Japan:[126]

"In the case of a bay or gulf the whole of which is regarded, by time-honoured and generally accepted usage, as belonging to the coastal State in spite of the fact that the distance between the two coasts exceeds ten nautical miles, the territorial waters extend seawards at right angles from a straight line drawn across the bay or gulf at the entrance."

Norway:[127]

"There is no rule in Norway regarding the maximum distance between the starting-points of the base lines from which the breadth of the territorial waters is calculated. In choosing the places which, according to the Decree of 1812, are to be regarded as the extreme points, the particular circumstances of each part of the coast have to be taken into account. There may be historical, economic or geographical factors, such as a traditional conception of territorial limits, the undisturbed possession of the right of fishing, exercised by the coastal population since time immemorial and necessary for its subsistence, and also the natural limits of fishing-grounds.

"In this connexion, it should also be observed that all fjords, bays and coastal inlets have always been claimed as part of the Norwegian maritime territory, whatever the width at their mouth and no matter whether they are formed by the mainland or by developments of the '*Skjaergaard*'. In determining the starting-points for calculating the breadth of territorial waters, the base line chosen is the lowest-water mark."

Netherlands:[128]

"The Netherlands see no reason to object to the recognition of historic rights in respect of certain bays; such rights would, however, have to be precisely defined in the proposed Convention."

Poland:[129]

"... Regard should also be had to established usage. If a State exercises sovereignty over a bay and no objection has been raised by other States, the waters of the bay should be regarded as territorial waters."

Portugal:[130]

"There are, however, bays with a breadth largely exceeding the limits previously suggested which nevertheless are regarded in their entirety as part of the national territory of the States to which their shores belong. These are what are known as *fechadas* bays. This exception is founded on the domestic legislation of the various States, their higher interests and necessities, and long-established usages and customs. Moreover, the special position of these bays has been recognized both in judgements of the courts and in certain treaties. From a variety of circumstances, the State to which the bay belongs finds it necessary to exercise full sovereignty over it without restriction or hindrance. The considerations which justify their claim are the security and defence of the land territory and ports, and the well-being and even the existence of the State.

"In addition, these bays are in some cases recognized spawning- and breeding-grounds of certain species of fish of high commercial and industrial value. These species would tend to disappear if no restrictions were placed on the methods of fishing. Again, such bays may be very productive fishing-grounds, and for that reason it is absolutely essential that the industry there should be regulated and controlled. As was previously stated, this would only be feasible if the sovereignty of the bays was assigned to the State owning its shores.

"It should be specially pointed out that regulation and control of this kind would also be advantageous to other States as, owing to the well-known fact of the dispersion of species, the open sea would be abundantly stocked with fish.

"Moreover, the population on the shores of certain bays enjoy the exclusive right of fishing through immemorial and unbroken usage, and fishing is their best and most remunerative occupation. The retention of this exclusive right is a matter of supreme importance for such populations.

"In the case of any bay possessing some or all of the characteristics mentioned above, no limitation is or can be placed on its breadth reckoned along the lines joining the outermost headlands. These bays belong wholly to the States concerned and form an integral part of their territory, the base line for calculating the belt of territorial waters being the line uniting the outermost points of the bay.

"In this way Portugal regards as part of her European continental territory the bays formed by the estuaries of the rivers Tagus and Sado, comprising the areas included between Cape Razo and Cape Espichel and between Cape Espichel and Cape Sines respectively."

[126] *Ibid.*, p. 168.

[127] *Ibid.*, p. 174.

[128] *Ibid.*, p. 177.

[129] *Ibid.*, p. 182.

[130] *Ibid.*, p. 184.

PART II

The theory of historic bays: an analysis

I. LEGAL STATUS OF THE WATERS OF BAYS REGARDED AS HISTORIC BAYS

94. Are the waters of a bay which is regarded as a historic bay part of the "territorial sea", or are they assimilated to "internal waters"? This question is very important, for different rules govern the two parts of the sea, particularly as regards one point of vital interest in international law: the innocent passage of foreign vessels. As a general rule, States are not bound under international law, to allow such passage in their internal waters.

95. For the purpose of determining the legal status of historic bays, two distinct situations have to be considered: (*a*) historic bays bordering on the shores of a single State; and (*b*) those bordering on the shores of two or more States.

A. *Historic bays the coasts of which belong to a single State*

96. The distinction between the waters within historic bays surrounded by the territory of a single State and the territorial sea seems to be a well established fact. Nevertheless, the distinction has not always been formulated with all the desirable clarity. For example, the

note addressed by the Norwegian Minister of the Interior to the Norwegian Minister of Foreign Affairs concerning the Vestfjord, states that the fjord in question "is considered to form part of the territorial sea of Norway" (*supra*, para. 38). In its reply to questionnaire No. 2 prepared in 1926 by the Committee of Experts for the Progressive Codification of International Law, the Norwegian Government stated that "Norwegian bays and fjords have always been regarded and claimed by Norway as forming part of the territory of the Kingdom". In the same paragraph, however, the Norwegian Government added that "Norwegian law has always held from most ancient times that these bays and fjords are *in their entirety* an integral part of Norwegian territorial waters" (*supra*, para. 35).

97. In its reply to the list of points prepared by the Preparatory Committee of the Codification Conference, 1930, the French Government stated that "Granville Bay is recognized to consist of territorial waters" (*supra*, para. 93). Similarly the Polish Government stated that "if a State exercises sovereignty over a bay and no objection has been raised by other States, the waters of the bay should be regarded as territorial waters" (*supra*, para. 93). The Egyptian Government said that "according to Egyptian public law, the breadth of the territorial waters is..., except as regards the Bay of El Arab, the whole of which is, owing to its geographical configuration, regarded as territorial waters."[131]

98. Some of the authorities also seem — at least, that is the impression one obtains from the language they use — to confuse the waters of historic bays with the territorial sea. For example, De Cussy regards certain maritime areas such as the Sea of Azov, the Zuyder Zee and the Gulf of Bothnia, as part of the territorial sea (*supra*, para. 12). It may well be that the confusion is often due to the looseness of the terminology employed rather than to differences of opinion on the actual principle.

99. Westlake states that many gulfs are "recognized by immemorial usage as territorial sea of the States into which they penetrate". Yet in citing certain examples, he goes on to say: "The Bay of Conception... which is wholly British... Chesapeake and Delaware Bays, which belong to the United States, and the Bay of Cancale... which belongs to France" (*supra*, para. 92).

100. Similarly, Pitt-Cobbett states that Conception Bay "was held to be a part of British Territory"; that Hudson Bay "is also claimed as territorial water by Great Britain"; that the United States "include in their territorial waters" Chesapeake Bay, Delaware Bay and others; that France "claims" the Bay of Cancale; and that Norway claims Varangerfjord "as territorial waters" (*supra*, para. 92).

101. The terms in which these opinions are expressed would hardly justify the conclusion that their authors necessarily assimilate the waters of historic bays to the territorial sea. The distinction between these two classes of maritime area is often obscured by defective terminology. Areas normally regarded as "internal waters" are variously referred to as "territorial waters", "national waters" or "waters forming part of the territory". The International Law Commission has now put an end to this terminological chaos by giving each of the three parts of the sea a distinct designation: "the high seas", "the territorial sea" and "internal waters".

102. The distinction between the waters of historic bays and the territorial sea is always clearly drawn in draft codes. According to the draft codes, whether prepared by learned societies or under the auspices of the League of Nations — all of which use more or less the same formula regarding the delimitation of the territorial sea in bays — the line from which the territorial sea is to be measured in a bay is a straight line drawn across the mouth at the point nearest to the sea where the width of the bay does not exceed a given distance (ten miles, twelve miles, etc.).[132] The fact that the territorial sea does not begin, in a bay, until a fictitious line drawn in the sea at a certain distance from the coast clearly implies that the waters situated to landward of that line are not part of the territorial sea. The same applies, therefore, to the waters of historic bays, the status of which is recognized by these draft codes as an exception (or as a possible exception) to the general rule applicable to ordinary bays. The draft convention amended by Mr. Schücking in consequence of the discussion in the Committee of Experts (*supra*, para. 86) even states expressly, in article 4, that the waters of the bays defined in that article are to be assimilated to internal waters; and the bays defined in that article are those which are bordered by the territory of a single State and in which the territorial sea is measured from a straight line drawn across the bay at the part nearest the opening towards the sea where the distance does not exceed ten miles "unless a greater distance has been established by continuous and immemorial usage".

103. The draft articles prepared by the International Law Commission[133] also draw a clear distinction between the waters of bays and the territorial sea. The Commission's draft assimilates the waters of ordinary bays, which it defines and for which it lays down the

[131] *Ibid.*, p. 125; see also *supra*, para. 24.

[132] The same procedure for delimiting the territorial sea in bays is prescribed in many treaties and national statutes; e.g. Treaty of 2 August 1939 between Great Britain and France, article 9 (de Martens, *Nouveau recueil general de traites*, vol. XVI, p. 254); Convention of 6 May 1882 between Germany, Belgium, Denmark, France, Great Britain and the Netherlands, article 2 (*Ibid.*, 2nd series, vol. XIX, p. 510); Treaty of 27 March 1893 between Portugal and Spain, article 2 (*British and Foreign State Papers*, vol. 85, p. 416); Treaty of 31 December 1932 between Denmark and Sweden, article 2 (*League of Nations Treaty Series*, vol. 139, p. 215).

National statutes: Brazil, Decree No. 5796 of 11 June 1940, article 17 (1) (*Collecçao das leis*, 1940, vol. VI); Italy, Navigation Code of 30 March 1942, article 2 (*Gazzetta Ufficiale* No. 75, 1942).

A number of statutes classify as internal waters all bays bordering on the country's shores; some of these specify limits, others do not. See for example, the Yugoslav Act of 1 December 1948 (*Sluzbeni List*, vol. 4, No. 106, 8 December 1948, item 875, p. 1739).

[133] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9* (A/3159).

applicable rules, to internal waters. Article 7, which is reproduced in its entirety above (para. 2), expressly states that the waters within a bay, the coasts of which belong to a single State and the width of which at the mouth does not exceed fifteen miles, shall be considered internal waters. In a bay with a wider opening, the only waters regarded as internal are those enclosed by a line drawn within the bay at the point where its width does not exceed fifteen miles. The article also provides for the case where different lines of a length of fifteen miles can be drawn. In that case, that line should be chosen which encloses the maximum water area within the bay. Paragraph 4 of the same article then provides that these rules do not apply to historic bays. Accordingly, following the precedent of the draft codes referred to in the preceding paragraph, the International Law Commission's draft recognizes that in the case of the so-called historic bays there may be some departure from the restrictive rules envisaged for ordinary bays.

104. The exception contained in article 7, paragraph 4, covers, in addition, certain other noteworthy cases, namely those where the straight baseline system provided for in article 5 is applied.[134] The full text of article 5 reads as follows:[135]

"1. Where circumstances necessitate a special régime because the coast is deeply indented or cut into or because there are islands in its immediate vicinity, the baseline may be independent of the low-water mark. In these cases, the method of straight baselines joining appropriate points may be employed. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters. Account may nevertheless be taken, where necessary, of economic interests peculiar to a region, the reality and importance of which are clearly evidenced by a long usage. Baselines shall not be drawn to and from drying rocks and drying shoals.

"2. The coastal State shall give due publicity to the straight baselines drawn by it.

"3. Where the establishment of a straight baseline has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as defined in article 15, through those waters shall be recognized by the coastal State in all those cases where the waters have normally been used for international traffic."

105. In its draft, therefore, the Commission envisages another category of waters which it likewise describes as internal waters. These are the maritime areas lying to landward of straight baselines the drawing of which is justified by the special geographic features of the coast or, "where necessary", by economic interests "the reality and importance of which are clearly evidenced by a long usage". These provisions were drafted on the basis of the judgement of the International Court of Justice in the Anglo-Norwegian Fisheries Case (18 December 1951). The Court held that certain basic considerations brought to light criteria which could provide courts with an adequate basis for their decision regarding the delimitation of the territorial sea. In the light of these considerations, the Court approved the Norwegian system of delimitation (*supra*, para. 64) prescribed by the Decree of 1935 on the grounds of "well-established national titles of right", "the geographical conditions prevailing on the Norwegian coasts" and the "vital interests of the inhabitants of the northernmost parts of the country". The Court held that the Norwegian waters situated between the baseline and the land were internal waters.[136] [137]

106. Nevertheless, the provisions of the International Law Commission's draft governing this category of internal waters are so worded that, in certain circumstances, these waters may not enjoy exactly the same status as internal waters normally enjoy, for within these internal waters created by the drawing of straight baselines, the coastal State is bound to recognize the right of innocent passage in all cases where those waters "have normally been used for international traffic".

107. In effect, the Commission has propounded a principle which could be termed the principle of the historic right of innocent passage in a specified category of internal waters. It seems, however, that this principle can only be invoked in wholly new situations. The commentary to article 5 states:

"The question arose whether in waters which become internal waters when the straight baseline system is applied the right of passage should not be granted in the same way as in the territorial sea. Stated in such general terms, this argument was not approved by the majority of the Commission. The Commission was, however, prepared to recognize that if a State wished to make a fresh delimitation of its territorial sea according to the straight baseline principle, thus including in its internal waters parts of the high seas or of the territorial sea that had previously been waters through which international traffic passed, other nations could not be deprived of the right of passage in those waters. Paragraph 3 of the article is designed to safeguard that right."

108. Article 5, paragraph 3, which is the paragraph in which this principle is stated, was non-existent in the draft articles on the régime of the territorial sea prepared by the Commission at its seventh session. The Commission inserted this paragraph in its final draft in the light of observations made by Governments. In the comments submitted by the Government of the United Kingdom, it is stated that:[138]

"... Her Majesty's Government regard it as imperative that, in any new code which would render legitimate the use of baselines in proper circumstances, it should be clearly stated that the right of innocent passage should not be prejudiced thereby, even though this may involve that, in certain cases, this right shall become exercisable through internal as well as through territorial waters. Her Majesty's Government consider that the Commission would be performing a most useful function if it were to give mature consideration to the problem how the use of baselines is to be reconciled with existing rights of passage. For their part, Her Majesty's Government can only say at this

[134] For the text of article 7, paragraph 4, see *supra*, para. 2.

[135] *Official Records of the General Assembly, Eleventh Session, Supplement No. 9* (A/3159), pp. 13 and 14.

[136] *Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951: I.C.J. Reports, 1951, p. 132.*

[137] See also the Court's ruling on the legal status of "historic waters", *supra*, para. 58.

[138] *Official Records of the General Assembly, Tenth Session, Supplement No. 9* (A/2934), pp. 43 and 44.

stage that, in their view, in case of conflict, the right of passage, as a prior right and the right of the international community, must prevail over any alleged claim of individual coastal States to extend the areas subject to their exclusive jurisdiction."

109. In this connexion, it is pertinent to recall the United Kingdom's admission in the Anglo-Norwegian Fisheries Case that Norway was entitled to claim as Norwegian internal waters, on historic grounds, all fjords and sunds which fell within the conception of a bay (conclusion No. 5); and that, also on historic grounds, Norway was entitled to claim as Norwegian territorial waters all the waters of the fjords and sunds which had the character of legal straits (conclusion No. 9) (*supra*, para. 57). The United Kingdom contended, however, that part of those waters, including those forming the channel known as the Indreleia, constituted an international route and that, consequently, the right of innocent passage through it could not be denied. In dealing with this last submission, the Court held that the Indreleia was not a strait at all but rather a navigational route prepared as such by means of artificial aids to navigation provided by Norway. In those circumstances, the Court was unable to accept the view that the Indreleia had a status different from that of the other waters included in the *skjaergaard*. The Court did, however, qualify its ruling on the Indreleia by stating that it applied only "for the purposes of the present case" (*supra*, para. 72).

110. It will be noted that, in this case, the United Kingdom, in taking the view that the "historic waters" constituted an international navigational route, proposed that those waters should be assimilated not to internal waters but to the territorial sea. Accordingly, the proposal took into account the legal incompatibility between the concept of internal waters and that of the right of innocent passage of foreign vessels. On the other hand, it constitutes a departure from the rule that historic waters are internal waters.

111. The treatment of the waters of historic bays as internal waters is recognized in the decisions of national courts relating to certain bays, such as the Bay of Chaleur, Chesapeake Bay, Conception Bay and Delaware Bay (*supra*, paras. 14-23).

112. In their replies to the list of points prepared by the Preparatory Committee of the Codification Conference, 1930, several Governments expressed the opinion that the waters of historic bays were internal waters (see, for example, the replies of the Governments of Germany,[139] Canada,[140] Great Britain,[141] Japan [142] and Portugal [143]). The majority of the learned authorities take the same view.

113. Sir Cecil Hurst [144] makes a special point of showing that the waters of bays are internal waters and not part of the territorial sea. In support of his argument, he cites, first, the opinion expressed by Lord Hale, in *De Jure Maris* (p. 1), which has been followed in various judicial decisions and which forms the substance of British doctrine on that subject:

"That arm or branch of the sea which lies within the *fauces terrae* where a man may reasonably discern between shore and shore is, or at least may be, within the body of a county and therefore within the jurisdiction of the sheriff or coroner."

114. The author also cites some judicial decisions, among them those which determine the status of Conception Bay, Chaleur Bay and Chesapeake Bay. He concludes this part of his article by saying:

"The series of precedents and authorities quoted above, all working back ultimately to Lord Hale's principle that 'waters *intra fauces terrae* may be within the body of a county', confirm the proposition that the interior waters of a bay are national waters [145] and not territorial waters, but the question of what is for this purpose a bay, that is to say, what body of water *intra fauces terrae* can be so appropriated as to become a part of the national territory, must still be considered."

115. After considering the rules applicable to the bays which should be considered as forming part of the national territory, Sir Cecil concludes as follows:

"A bay for this purpose means a defined inlet, penetrating into the land, moderate in size and with both shores subject to the same sovereign. An inlet at the mouth of which one can see clearly from shore to shore may be presumed to have been appropriated as part of the national territory and will, therefore, constitute a bay; for working purposes this distance may be taken as ten miles and the line will then pass from headland to headland. In the case of a larger inlet, it lies on the territorial State to establish that it has been appropriated as part of the national territory. Where this is not proved, the line from which the territorial waters are measured will not pass from headland to headland but will cross the inlet at the spot where it first narrows to such an extent as to be obviously a bay; in practice this may be taken as the place where it first narrows to ten miles.

"All the waters lying inwards from this base line are national waters and form part of the national territory. They stand in all respects on precisely the same footing as the national territory. Waters within the three-mile limit to seawards of this base line are territorial waters. In territorial waters foreign States are entitled, to the extent recognized by international law, to the exercise of the right of passage. In national waters there is no such right."

116. Gidel [146] firmly insists that the waters of historic bays, like those of ordinary bays whose width does not exceed the distance adopted for determining whether or not an inlet constitutes a bay (in his opinion, ten miles), are internal waters. He expresses himself as follows:

"... a statement that a bay, for example one within two headlands fifty miles apart from each other, is a 'historic' bay, means that all the waters of that bay enclosed by that fictitious line between the two headlands are internal waters and that only from that line, representing the outer limit of 'internal waters', can the territorial sea be measured. If the bay, were not 'historic', the belt of territorial sea would follow the

139 Ser. L.o.N.P. 1929.V.2, p. 111.

140 *Ibid.*, Supplement (a), p. 2.

141 *Ibid.*, p. 163.

142 *Ibid.*, p. 168.

143 *Ibid.*, p. 184.

144 "The Territoriality of Bays", *British Year Book of International Law*, 1922-23, pp. 42-54.

145 By "national waters" the author means "internal waters". He uses the first of the two expressions in order to draw a clear distinction between the "marginal belt, commonly known as territorial waters, and the bay".

146 *Op. cit.*, pp. 624-627.

sinuosities of the coast and, as long as those sinuosities created [illegible] with a mouth wider than the distance adopted [illegible] whether an inlet constitutes a bay (in our system, ten miles), that bay would contain no internal waters [illegible] the very small area between the low water mark and the bays. When once a bay has been held to be 'historic', all of its waters become internal waters with all the consequences which the status of internal waters entails. One consequence is that the coastal State is no longer bound to admit the 'innocent passage' of foreign vessels in the waters of that bay.

"It cannot be too strongly stressed, therefore, that 'historic' waters are not merely waters over which the coastal State claims certain rights, certain powers taken from the aggregate of the powers which together constitute what is called 'sovereignty'; there is nothing in common between the appropriation by a State of a certain area as 'historic waters' and the extension of some of that State's powers beyond its maritime territory into the part of the high seas known as the contiguous zone. In a sea area which has acquired a 'historic' character, the coastal State may wholly deny to the other members of the international community any access whatsoever to the subsoil, soil, mass and surface of the water, or the superjacent air space. Furthermore, the limits of the maritime territory of that State are advanced by an equivalent distance seawards, the baseline of the territorial sea coinciding with the outer limit of internal waters. Consequently, any claim by a State alleging a 'historic' title to a portion of the sea which is not part of its maritime territory under the generally accepted rules has extremely serious consequences for all the other States, without distinction." [147]

"As a rule, the coastal State will not in fact claim over the waters which it means to transfer to the 'historic' category all of the rights which a coastal State is entitled to exercise in its internal waters; normally, only the exercise of the right of fishing (or, in the case of certain species of marine fauna, the right of hunting) will be claimed as the exclusive prerogative of its nationals or made conditional, without discrimination on grounds of nationality, on the previous issue of a licence. Such a prohibition against foreign fishermen in a specified area of water does not prove that that area is regarded as internal waters, for international law permits the exclusion of foreign fishermen from waters forming part of the territorial sea. Such a denial of the right to fish in areas where that right had until then been exercised implies that those areas are now regarded by the coastal State as at least within its territorial sea; the coastal State must therefore show either that the breadth of its territorial sea has been increased or that the baseline of its territorial sea — the breadth of which remains unchanged — has been carried seawards; such an advance of the baseline implies a corresponding extension of internal waters. In practice, the coastal State will always adopt the latter method, which is much simpler than the former, for the extension of internal waters can be done administratively, by drawing new baselines, without disturbing the legislative provisions on the breadth of the territorial sea. The desired result can be attained by routine measures taken by the executive. The final success of the operation will depend on the nature and vigour of the reactions which it will provoke among foreign States. The ensuing diplomatic discussions will then provide the coastal State with the necessary opportunity to invoke, in more or less direct form, the theory of 'historic waters', as justifying the inclusion in its internal waters of sea areas which the ordinary rules of the public international law of the sea do not authorize it to appropriate."

117. In a later passage, Gidel stresses the incompatibility between the concept of internal waters and the exercise of the right of innocent passage by foreign vessels.

"It is always necessary to remember, in dealing with 'historic waters', the essential point that those waters are internal waters. This fact explains many aspects which would otherwise be difficult to grasp. The theory was originally evolved to apply to 'bays', and is still referred to as the theory of 'historic bays', because it was never envisaged that it might apply except in areas which, by reason of their configuration, are generally not used as major international routes of transit; the idea of internal waters and the right of innocent passage exercisable by foreign vessels are two incompatible concepts. The theory of historic waters as internal waters has consequently never applied except to waters where this right of innocent passage is but of insignificant practical interest. That was the idea in the mind of Judge Draper in the *Alleganpax* case, when he emphasized, with reference to the 'historic' Chesapeake Bay, that that Bay could not be made a roadway from one nation to another (Moore's *International Arbitrations*, vol. IV, p. 4341). And, lastly, this explains why the doctrine of historic bays is, as a general rule, never invoked except in the case of bays enclosed by the territory of a single State. For where there are several coastal States around a given bay, freedom of passage becomes a necessity and, as there can be no question of innocent passage through internal waters, the theory of historic bays, which would assimilate such an area to internal waters, cannot apply. Neither the Committee of Experts nor any of the learned societies which have examined the question of 'historic bays' ever had in mind, in that context, any bay other than one bordering on the territory of a single coastal State ..."

118. L. Cavare [147] maintains that since the juridical regime of historic waters corresponds to that of internal waters there can be no right of innocent passage through these waters. The State (he says) exercises over historic waters the totality of the rights which it possesses in its internal waters. He presupposes, however, that "the existence of historic waters is contingent on one general and social condition: that the waters in question do not constitute international waterways. If they did, the position would be very different and the coastal State would be unable to prevent innocent passage in such waters."

119. Higgins and Colombos [148] express a similar opinion:

"The rights of jurisdiction of the littoral State over its territorial gulfs and bays should be considered to be the same as over its national waters. The State is therefore entitled to reserve fisheries to its own subjects and to prescribe and regulate the admission and sojourn of foreign vessels therein, under the same conditions. Where, however, bays or gulfs constitute an international highway, the right of innocent passage of merchant ships must be conceded by the territorial State."

120. Fauchille states the following: [149]

"... According to a generally accepted opinion, the status of gulfs and bays varies, depending on whether they border on the land of one State or of several States, whether their entrance is or is not less than ten miles wide and whether they have or have not a historic character. Gulfs and bays which are less than ten miles wide and are surrounded by a single State, as well as those which, regardless of their width and the ownership of the surrounding coast, are historic bays, form part of the national territory of the countries on which they border; the others are nothing other than a portion of the open sea. This distinction is important in two respects: (1) From the point of view of the rights of States in gulfs and bays. If they (the gulfs and bays) are part of the territory of the coastal country, that country enjoys therein, in matters of navigation, fishing and jurisdiction, all the rights implicit in sovereignty, the scope of those rights depending on whether sovereignty is given an absolute or a relative character. If they are parts of the open sea, they must, both in time of peace and in time of war, remain open to all ships of all nations without restrictions and, as they are not subject to the jurisdiction of any single State,

147 *Le droit international public positif*, vol. II, Paris, 1951, p. 514.

148 *Ibid.*, p. 120.

149 *Op. cit.*, pp. 386-387.

the coastal State cannot enforce its fishing regulations therein; the principle of the freedom of the seas is then applicable in its entirety. (2) From the point of view of the determination of the territorial sea in the gulfs and bays. If these are really part of the State territory, the most landward line from which the littoral sea can be measured is the outer limit of that territory, which means from an imaginary line drawn between the outermost extremities of the coast at the orifice of the gulf or bay. If they are simply a continuation of the high seas, the territorial sea will, on the other hand, have to be measured outwards from the coasts of the gulfs or bays, over their entire curvature, following the sinuosities of the coast."

121. Oppenheim considers as "territorial" such bays as are enclosed by the land of a single littoral State and have an entrance not more than six miles wide (*supra*, para. 92). He defines the term "territorial" as follows: [150]

"The expression 'territorial bay' must not be allowed to obscure the facts (1) that the waters contained in territorial bays, and in the territorial portions of bays not wholly territorial, are not territorial waters and part of the maritime belt, but national waters; and (2) that the limit of the national waters is the datum line for the measurement of the maritime belt."

122. In describing the juridical consequences of the territoriality of bays, Oppenheim states: [151]

"As regards navigation, fisheries, and jurisdiction in territorial gulfs and bays the majority — rightly, it is believed — contend that the same rules of the Law of Nations are valid as in the case of navigation and fisheries within the territorial maritime belt. The right of fishery may therefore be reserved exclusively for subjects of the littoral State.[1] And navigation, *cabotage* excepted, must be open[2] to merchantmen of all nations, though foreign men-of-war need not be admitted unless the gulfs or bays in question form part of the highways of international traffic. But the matter is not settled, and there are some who maintain that foreign vessels may be excluded altogether from territorial gulfs and bays, or admitted only on payment of dues, rates etc."

"[1] The Hague Convention concerning Police and Fishery in the North Sea, concluded on 6 May 1882, between Great Britain, Belgium, Denmark, France, Germany and Holland, by Article 2 reserves the fishery for subjects of the littoral States of such bays as have an entrance from the sea not wider than ten miles, but reserves likewise a maritime belt of three miles to be measured from the line where the entrance is ten miles wide. Practically, the fishery is therefore reserved for subjects of the littoral State within bays with an entrance much wider than ten miles. See Martens, *N.R.G.*, 2nd ser., 9, p. 864."

"[2] But this is not universally recognised, see, for instance, Twiss I, para. 181; Calvo I, para. 307."

123. It may be pertinent to cite the opinions of some members of the Institute of International Law on the legal status of internal waters created through the drawing of straight baselines. In his report of the "distinction between territorial waters and internal waters" submitted to the Tenth Committee of the Institute at its 1954 session at Aix-en-Provence, Mr. Frede Castberg makes the following statement: [152]

"For the purpose of calculating the outer limit of its territorial sea, and especially when the object is to establish the territorial limit within which the right of coastal fishery is reserved exclusively to its population, a State may be entitled on historical, economic and social grounds, to draw long baselines between islands and rocks. Yet that State may conceivably decide not to regard all the waters within those baselines as internal waters, within the meaning attaching to this expression in international law. It may deem it fair or convenient to permit vessels of other States, in time of peace, too, to exercise the right of passage in a portion of the waters situated within the baselines."

124. In a footnote, Mr. Castberg refers to the following statement by Raestad: [153]

"In any case, it is only natural for the foreign States concerned to object to a declaration that all the waters within the baselines are internal waters in the strictest sense."

125. Later, in his conclusion No. 4, Mr. Castberg states: [154]

"The limits of the internal waters of the coastal State may be drawn differently for different purposes, pursuant to legislative provisions enacted by that State, provided always that such a measure does not prejudice the rights of other States, especially the right of innocent passage through the territorial sea."

126. Sir Gerald Fitzmaurice, while sharing the view expressed by Mr. Castberg in conclusion No. 4, prefers to express the idea in the following manner: [155]

"... I would prefer to say that all waters inside the base line from which territorial waters are measured, are internal waters; but that a further distinction is to be drawn between those internal waters which are genuinely *inland* waters (e.g., rivers, creeks, inland lakes, canals, etc.) and those which are not (e.g., large bays and waters between the mainland and islands off the coast). Generally speaking, there is no right of passage through the former waters, but there is, or should be, through the latter. (If this idea were adopted, the expressions 'internal waters' and 'inland waters', instead of meaning the same thing, as they do at present, would each have a distinct meaning.) Under no circumstances should the extension of internal waters made possible by the new base line method operate so as to impede the right of innocent passage through what would be territorial sea if the older coast-line (or tide-mark) rule were still applied."

127. Mr. J. P. A. François, on the other hand, expresses a completely contrary opinion on this question. He states in this connexion (addressing his remarks to Mr. Castberg, rapporteur): [156]

"... The system which you advocate would lead to the adoption of three different zones of the sea: the territorial sea, internal waters and a third zone, which is neither territorial sea nor internal waters, with a somewhat vague legal régime. I would like to dispute the suggestion that international law recognizes the existence of this third zone. International law, in my opinion, bases itself on the assumption — which is, indeed, the most logical one — that the two lines coincide. Your attempt to show the existence in international law of this third zone has not, in my opinion, succeeded. For it is not sufficient to show, as you have done, that certain States do not exercise all their rights in internal waters over the area of those waters. A State is free at any time and in any part of its territory, not to exercise the plenitude of its rights, and this abstention does not produce any essential change in the juridical status of that part of the territory. An area of the sea within the limit of the territorial sea, drawn in conformity with the rules of international law, remains internal waters, whether or not the coastal State chooses to exercise therein all the rights which it possesses. To create new 'zones' in such cases and to recognize, as you propose, 'that the limit of internal waters may be drawn differently for different purposes' can only lead to confusion. Instead of recognizing different limits of internal waters, we should, in my opinion, maintain the clear and practical rule of international law that the outer limit of internal waters coincides with the inner limit of the territorial sea, without prejudice to the freedom of the coastal State to abstain from exercising all of its sovereign rights over the whole extent of that zone."

128. Gidel also questions the views expressed by Mr. Castberg on this point. He states: [157]

"The partitioning which you suggest in internal waters would, I fear, be most dangerous and would only introduce an element of discord on a point on which we have the good fortune to see agreement both in practice and among the authorities. Such a partitioning would imply that each coastal State could, at its pleasure, invest *its own* internal waters with a special juridical status; in this private régime governing internal waters, it would retain all the powers which it might consider advantageous while disclaiming all those creating some liability. But a régime consistent with legal principles should compose a balanced whole, in which the recipient of advantages also has to bear the disadvantages. This concept is of particular importance in international law, where the members of the international community should, in the eyes of the law, stand in a comparable position in their mutual relations. ..."

129. Further on, Gidel adds: [158]

"The fact that a State chooses not to exercise in a given part of its internal waters all the prerogatives vested in it by ordinary international law, neither produces any substantial modification in the juridical status of that State's internal waters nor changes in any way the delimitation of those waters in relation to territorial waters."

130. Gidel ends his criticism of Mr. Castberg's conclusion No. 4 with these words: [159]

"... It is not within the powers of a coastal State to invest its internal waters with a special juridical status less favourable to it than the concept of 'internal waters', as understood in international law, necessarily implies. But the coastal State remains free to forgo, either by treaty or by legislative action, the exercise of any particular prerogative which ordinary international law accords in its internal waters to the coastal State as such."

B. *Historic bays the coasts of which belong to two or more States*

131. The information on this category of bays is not very plentiful. The draft codes prepared by learned societies and those drawn up under the auspices of the League of Nations [160] consider solely the case of a historic bay bordering on the shores of a single State. The same is true of the draft of the International Law Commission, which does not deal with bays bordering on the coasts of two or more States because the Commission had not "sufficient data at its disposal concerning the number of cases involved or the regulations at present applicable to them".

132. The status of the Gulf of Fonseca, the waters of which abut on the territories of Nicaragua, Honduras and El Salvador, was settled by the judgement delivered on 9 March 1917 by the Central American Court of Justice (*supra*, paras. 44-47). This judgement, although confirming that the waters of the Gulf are of a historic character, does not attribute to them the characteristics of internal waters; rather, it tends to class them as territorial sea. The judgement recognizes that the three riparian States are "co-owners" of the waters of the Gulf, except as to the littoral marine league, which is the "exclusive property" of each. This means that the waters of the Gulf are divided into two parts: the first, which begins at the shoreline and continues for a distance of one marine league, is the territorial sea of each of the coastal States; the second, containing all the remaining ("non-littoral") waters of the Gulf, is an area of territorial sea belonging to the three States in common. The Court held that "as to a portion of the non-littoral waters there was an overlapping or confusion of jurisdiction in matters pertaining to inspection for police and fiscal purposes and purposes of national security, and that as to another portion thereof, it is possible that no such overlapping and confusion takes place". The Court decided, therefore, "that as between El Salvador and Nicaragua co-ownership exists with respect to both portions, since they are both within the Gulf; with the express proviso, however, that the rights pertaining to Honduras as *copurcener* in those portions are not affected by that decision".

133. The judgement of the Central American Court of Justice on the status of the Gulf of Fonseca contains two essential points: (1) as historic waters, the waters of the Gulf belong to the coastal States; (2) those waters have the characteristics of the territorial sea and not of internal waters. With reference to the last point, Gidel remarks: [161]

"The judgement of The Central American Court of Justice ... attributes to the waters of the gulf the characteristics not of internal waters, which their status as a historic bay would normally have required, but of the territorial sea. This is a truly remarkable departure from the logical rules governing historic bays."

134. Another relevant case is that of the Bay of Fundy, a ruling on the status of which was requested from Umpire Bates, appointed under the Anglo-American Claims Convention of 1853, in consequence of the seizure of the United States vessel "Washington" at a point ten miles from the shore. The umpire, in deciding that the Bay of Fundy was not a British bay, stated: [162]

"The Bay of Fundy is from 65 to 75 miles wide and 130 to 140 miles long. It has several bays on its coast. Thus the word bay, as applied to this great body of water, has the same

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[150] *Op. cit.*, p. 505, footnote 1.

[151] *Op. cit.*, pp. 509-510.

[152] *Annuaire*, vol. I (1954), pp. 126 and 127.

[153] "*Le problème des eaux territoriales à la Conférence pour la codification du Droit international*", *Revue de Droit international*, 1931, VII, p. 134.

[154] *Annuaire*, vol. I (1954), p. 172.

[155] *Ibid.*, p. 206.

[156] *Ibid.*, p. 208.

[157] *Ibid.*, pp. 219 and 220.

[158] *Ibid.*, p. 221.

[159] *Ibid.*, p. 223.

[160] All the Governments which replied to the Bases of Discussion prepared by the Preparatory Committee of the Codification Conference, 1930, expressed the view that, in the case of bays bordering on the territory of two or more States, the breadth of the territorial sea should be measured from the low-water mark along the coast (Basis of Discussion No. 9 and Observations of the Committee: Ser. L.o.N.P. 1929.V.2, p. 45).

[161] *Op. cit.*, p. 627.

[162] Moore, *International Arbitrations*, vol. 4 (1898), p. [illegible].

meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume the sovereignty. One of the headlands of the Bay of Fundy is in the United States, and ships bound to Passamaquoddy must sail through a large space of it. The islands of Grand Menan (British) and Little Menan (American) are situated nearly on a line from headland to headland. These islands, as represented in all geographies, are situate in the Atlantic Ocean. The conclusion is, therefore, in my mind irresistible that the Bay of Fundy is not a British bay, nor a bay within the meaning of the word as used in the treaties of 1783 and 1818."

135. Dana,[163] in an opinion expressed in November 1877 to the Halifax Fishery Commissioners established pursuant to the Washington Treaty of 1871 between Great Britain and the United States, commented on this decision in these terms:

"This decision was put partly upon its width, but the real ground was that one of the assumed headlands belonged to the United States, and it was necessary to pass the headland in order to get to one of the ports of the United States."

136. Similarly, Fauchille[164] states:

"The arbitral award of 23 September 1854 regarding the Bay of Fundy ruled that that Bay was an open sea, not only because its opening is sixty-five to seventy-five miles wide but also, and indeed principally, because its coasts do not all belong to a single State; one of its headlands is situated in the territory of the United States, the other in the territory of Great Britain."

II. The constituent elements of the theory of historic bays and the conditions for the acquisition of historic title

137. The original purpose of the theory of historic bays was to exclude from the application of the general régime of bays which was then being elaborated certain bays whose status had already been settled by history. In other words, its object was to ensure that, despite the tendency to restrict the area within any large bay which could validly be deemed internal waters, the status of those bays which had already been accepted as wholly internal, on essentially historical grounds, would remain unchanged. Hence, under the theory as originally conceived, a State would be unable to lay claim to a particular bay except by relying mainly on historical evidence, by arguing from the fundamental principle: this bay belongs to me because it has always belonged to me, or because it has belonged to me for a certain time. Today, however, the theory is no longer conceived in such limited terms. In order to place certain bays outside the scope of the normally applicable rules, States no longer rely on factors of a purely historical character; they also — and sometimes even exclusively — rely on factors of a very different nature. The purpose of this inquiry is to discover the factors relied on for the purpose of determining which bays are to constitute exceptions to the rules generally accepted — or, at least, to be elaborated — with respect to ordinary bays.

138. Municipal and international case-law, draft codes and the works of the learned authorities reveal two fundamentally different conceptions of this particular point of the problem. These conceptions are most clearly apparent in doctrine and in the works of codification, as judicial decisions have always ruled on the territoriality of certain bays or certain sea areas strictly in the light of the special circumstances of each case.

A. *First conception: "usage" the sole root of historic title*

139. According to this conception, the right to a bay which does not come under the general rule applicable to ordinary bays can only be founded on "usage". The supporters of this view do not, however, agree on the conditions which such usage should fulfil. One school of thought holds that national usage *per se* is a good root of historic title. Another school considers, on the contrary, that national usage cannot be a good root of historic title unless the usage was recognized, in one form or another, by the other States.

1. *National usage* per se *a good root of historic title*

140. Basis of Discussion No. 8 drafted by the Preparatory Committee of the First Conference for the Codification of International Law, 1930, in confirming the theory of historic bays, speaks only of "usage" (*supra*, para. 87).[165] Other drafts also base the theory exclusively on usage but take into account two additional notions: "time" and "continuity".

141. The draft adopted in 1926 by the Japanese International Law Society only takes into account the notion of time. It limits itself to the expression "immemorial usage" (*supra*, para. 82). By contrast, certain other drafts contain both the notions simultaneously. This is the case with the draft adopted by the Institute of International Law (Paris session 1894) in which the word "usage" is qualified by "continued and of long standing". The same expression recurs in the draft prepared by the International Law Association at its Brussels session (1895) and a similar one in the draft convention amended by Mr. Schucking in consequence of the discussions in the Committee of Experts. The same idea is taken up in Project No. 10 prepared in 1925 under the auspices of the American Institute of International Law (*supra*, paras. 74, 78, 80 and 85).

142. The definition of historic bays given in the project submitted in 1933 to the Seventh International Conference of American States by the American Institute of International Law refers solely to the attitude of the coastal State. It provides that bays or estuaries called historic are those over which the coastal State or States have traditionally exercised and maintained their sovereign ownership (*supra*, para. 81).

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[163] Cited by Phillimore, *International Law*, vol. I (1879), pp. 287-289.

[164] *Op. cit.*, p. 384.

[165] "Basis of Discussion No. 8, drafted by the Preparatory Committee, merely stated that a historic title was acquired by 'usage'. This expression was doubtless intended to imply a peaceful and continued exercise of sovereignty. It could not have been meant as a *purely national* usage, considered independently of the reactions which it provokes in the international community." (*I.C.J. Pleadings, Oral Arguments, Documents, Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951*, vol. III, Rejoinder of Norway, p. 454).

143. In its Counter-Memorial submitted to the International Court of Justice in the Fisheries case, Norway stated:[166]

"What essential point must a State establish in order to substantiate its claim to a bay on historic grounds? The first prerequisite of the coastal State's title is its assertion of sovereignty. It is not in itself sufficient, but it is indispensable. The other factors are but 'special circumstances', which support and justify the claim."

2. *National usage not a good root of historic title unless recognized by the other States*

144. The draft convention adopted by the International Law Association in 1926 speaks of "established usage generally recognized by the nations" (*supra*, para. 79). The draft adopted at its 1928 session at Stockholm by the Institute of International Law uses the expression "international usage". The Institute also considered the possibility of further qualifying this expression with the word "uncontested" (*incontesté*). That word, however, was finally not included (*supra*, paras. 75 and 76). In its reply in the Fisheries Case, the United Kingdom stated:[167]

"It is true that the word *incontesté* was dropped, but the word 'international' was retained to express the principle that *unilateral national pretention is not sufficient*. The national usage must have received *international recognition*."

145. During the debate in the Second Committee of the Codification Conference (1930) concerning the Preparatory Committee's Basis Discussion No. 8 (*supra*, para. 87), certain speakers emphasized the inadequacy of the concept of "usage" as the basis of the theory of historic bays. In the opinion of the Japanese delegation, "a mere claim on the part of the State concerned — which seems to be the sole condition according to the present text, to judge from the words 'by usage' — is not enough". For that reason, the Japanese delegation proposed that the words "long established and universally recognized" should be inserted before the word "usage".[168]

146. A. Raestad makes the following observation:[169]

"In my opinion the most important point is not when and how the occupation or usurpation of any given right in the coastal sea took place. What matters is when and how other nations gave their express or tacit consent, which transformed that occupation or usurpation into a legal title."

147. Fauchille gives the following definition of "historic or vital bays":[170]

"They are the large gulfs and large bays the territoriality of which has been recognized by long-accepted usage and by undisputed custom."

Later, the same author adds:[171]

"Similarly, it is the acquiescence of States which — so it has been held in judicial decisions — accounts for the territoriality of historic bays."

In support of this statement, Fauchille cites the judicial decisions regarding the Bays of Conception, Chesapeake and Delaware (*supra*, paras. 16-23). Then, after giving further examples of historic bays, he again states:[172]

"In cases where the coastal State has claimed sovereignty over such bays, it is the acquiescence of certain States and the absence of protest on the part of other States that have made those bays historic and have given them their territorial character."

148. Jessup also contends that:[173]

"... the legality of the claim is to be measured, not by the size of the area affected, but by the definiteness and duration of the assertion and the acquiescence of foreign Powers."

149. Gidel takes the following view:[174]

"... The mere fact that the coastal State advances the claim that specified waters should be regarded as its property does not in itself oblige other States to accept that claim; in the absence of any organ formally established to examine such claims and expressly authorized by each of the States concerned to render decisions, such claims can only be borne out by evidence of international acquiescence; as a general rule, prolonged usage will afford the necessary proof."

150. Higgins and Colombos express the similar view that:[175]

"... the territorial State is entitled to claim a wider belt of marginal waters, provided that it can show affirmatively that such a claim has been accepted expressly or tacitly by the great majority of other nations."

B. *Second conception: the vital interests of the coastal State as the possible and sole basis of the right to a bay*

151. According to Dr. Drago (*supra*, para. 92), a bay can only be considered historic if there is proof of both of the following: (1) the assertion of sovereignty, which is the basic requirement; and (2) some "particular circumstances" such as those cited by way of example, namely, geographical configuration, immemorial usage or (in Drago's view "above all") the requirements of self-defence.

152. In article 7 of the draft international convention submitted to the Buenos Aires Conference of the International Law Association in 1922 by Captain Storny the following definition of the theory of historic waters is given:

"A State may include within the limits of its territorial sea the estuaries, gulfs, bays or parts of the adjacent sea in which it has established its jurisdiction by continuous and immemorial usage or which, when these precedents do not exist, are unavoidably necessary according to the conception of article 2; that is to say, for the requirements of self-defence or neutrality or for ensuring the various navigation and coastal maritime police services."[176]

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[166] *Ibid.*, vol. I, p. 555.

[167] *Ibid.*, vol. II, pp. 623 and 624.

[168] League of Nations publication V. Legal, 1930, V. 18 (document C.351 (*b*). M.145 (*b*). 1930. V), p. 103.

[169] *La mer territoriale*, 1913, p. 167.

[170] *Op. cit.*, p. 380.

[171] *Ibid.*

[172] *Ibid.*, pp. 381 and 382.

[173] *Op. cit.*, p. 382.

[174] *Op. cit.*, p. 651.

[175] *Op. cit.*, p. 112.

[176] International Law Association, *Report of the Thirty-first Conference*, Buenos Aires, 1922, vol. 2, pp. 98 and 99.

153. According to Captain Storny, that article is:

"... of the greatest importance: it affirms in a more decisive form the last part of article 3 of the *Project de définition et régime de la mer territoriale* of the Institute of International Law. Clearly, too, it contains in synthesis the doctrine of historic bays, according to the manner in which the old principle was formulated by Drago. The final stipulation of the article is perfectly explicable as regards the new nations — the the American nations, for example — many of which possess long and still very thinly populated coasts, and in respect of which the condition of long-established dominion cannot be adduced, as in the case of nations which have already existed for a thousand years or more."

154. When the Second Committee of the 1930 Conference considered Basis of Discussion No. 8 (*supra*, para. 87), the representative of Portugal proposed that the Basis of Discussion should be amended by the addition of the following words:[177]

"or if it is recognized as being absolutely necessary for the State in question to guarantee its defence and neutrality and to ensure the navigation and maritime police services."

155. In support of this amendment, the representative of Portugal pointed out that the idea of usage envisaged in Basis of Discussion No. 8 was no longer unanimously accepted and that some authors adduced not only usage but also other factors which should be taken into account in determining the character of historic bays. After referring to the opinions expressed on this subject by Dr. Drago and Captain Storny, the Portuguese representative stated:[178]

"Generally speaking, usage must be respected, but sometimes usage may be unjustified. Moreover, if certain States have essential needs, I consider that those needs are as worthy of respect as usage itself, or even more so. Needs are imposed by modern social conditions, and if we respect age-long and immemorial usage which is the outcome of needs experienced by States in long past times, why should we not respect the needs which modern life, with all its improvements and its demands, imposes upon States?"

156. Thus, according to this conception, the right to a bay might derive either from usage or from the vital interest of the coastal State. The State would then be entitled to claim such a right by invoking circumstances into which the historical factor does not even enter. Gidel says:[179]

"In this way, the description 'vital bays' is gaining currency. This expression, which is placed on a footing of equality with the expression 'historic bays', sums up in one word the conditions of substance to be fulfilled by the areas in question, whereas the expression 'historic bays' suggested conditions of form only."

157. Expressing his opinion on the value of the notion of "vital bays", Gidel states:[180]

"... claims based purely and simply on the needs or interests of the coastal State, capable of being cited as precedents by other States having coastlines with a different geographic or hydrographic configuration, would be arbitrary."

158. Another significant comment is made by Bourquin:[181]

"... If the territoriality of a bay is to be determined in the light of all the circumstances which characterize each of them, then clearly the vital interests of the coastal State must be taken into account. The formula proposed by Captain Storni and later by the Portuguese Government tends perhaps to oversimplify the issue. Instead of embracing all the factors determining the bay's character, it concentrates on only one, to which it attaches, without any reservation or proviso, a decisive influence. But whatever criticisms may properly be levelled at the formula on that score, there seems little doubt that it expresses something which is not only common sense but also good law, consistent with the practice of States, namely, that the vital interests of the State in the possession of a bay consitute, side by side with historical tradition, one of the bases on which it may rely in claiming sovereignty therein.

"But why should this factor be considered strictly within the context of 'historic titles'? However widely the concept of a 'historic title' is construed, surely it cannot be claimed in circumstances where the historic element is wholly absent. The 'historic title' is one thing; the 'vital interest' is another. Each has its place among the factors to be considered in determining the régime applicable to bays, but they must not be confused."

C. *Various elements considered in judicial decisions dealing with the territoriality of certain bays or maritime areas*

1. *International cases*

Permanent Court of Arbitration (1910)

159. In an award cited earlier in this paper (*supra*, para. 49), the special arbitral tribunal which decided the North Atlantic Coast Fisheries Case between Great Britain and the United States (1910) recognized that "conventions and established usage might be considered as the basis for claiming as territorial those bays... called historic bays." But this statement was only made *obiter* and the tribunal did not go into the details of the theory which it upheld in principle.

160. It is pertinent, nevertheless, to quote from the tribunal's opinion the remarks relating to the notion of "bays" in general. The dispute concerned the interpretation of the Treaty concluded between Great Britain and the United States in 1818 and the meaning of the term "bay" was one of the contested points. The tribunal held that, for the purpose of determining the question of territoriality, the interpretation must take into account all the individual circumstances which were to be appreciated in the case of the bay in question:[182]

"... the relation of its width to the length of penetration inland; the possibility and the necessity of its being defended by the State in whose territory it is indented; the special value which it has for the industry of the inhabitants of its shores; the distance by which it is secluded from the highways of nations on the open sea; and other circumstances not possible to enumerate in general."

[177] Ser. L.o.N.P. 1930.V.16, p. 107.

[178] *Ibid.*, p. 106.

[179] *Op. cit.*, p. 629.

[180] *Ibid.*, p. 635.

[181] *Op. cit.*, p. 51.

[182] *Scott, op. cit.*, p. 187.

Central American Court of Justice (1917)

161. The judgement delivered by the Central American Court of Justice in 1917 regarding the Gulf of Fonseca (for an extract from this decision see *supra*, paras. 44-47) stated that that Gulf belonged to the category of historic bays because is combined all the characteristics that doctrine and the practice of States has prescribed as essential, namely: Secular or immemorial possession accompanied by *animo domini* both peaceful and continuous and by acquiescence on the part of other nations; the special geographical configuration that safeguards so many interests of vital importance to the economic, commercial, agricultural and industrial life of the riparian States; and the indispensable necessity that those States should possess the Gulf as fully as required by those primordial interests and the interest of national defence.

The International Court of Justice (1951)

162. The judgement delivered by the International Court of Justice on 18 December 1951 in the Fisheries Case between the United Kingdom and Norway contains some useful statements on this subject. In that case, the issue before the Court was not the territoriality of certain bays or maritime areas but the international validity of the Norwegian system of delimitation, which was disputed by the United Kingdom. The Court, however, in holding that the system was indeed consistent with the rules of international law, found support for its findings in the historic titles which Norway had claimed,[183] together with other circumstances, in order to justify its system.[184] Some passages from the judgement have already been cited (*supra*, paras. 58-67). They show the grounds on which the Court based its finding that the Norwegian system of delimitation was valid and the circumstances which it held justified Norway's contention that that system was binding on foreign States.

[183] Judge Hackworth declared that he concurred in the operative part of the judgement but desired to emphasize that he did so for the reason that he considered that the Norwegian Government had proved the existence of an historic title to the disputed areas of water (*Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951: I.C.J. Reports, 1951*, p. 144).

[184] Sir Gerald Fitzmaurice makes the following comment: "The point of vital interest regarding historic rights in the Fisheries Case was that the Court recognized yet another basis of historic title — a right to certain waters, deriving not from a historic claim to a given area of sea, as such, but from a historic system of delimiting territorial waters in general which, even if it were otherwise contrary to international law, the State concerned could be said to have acquired a right to employ by long-continued usage and action in that sense, acquiesced in, or anyhow not objected to, by other States." (The Law and Procedure of the International Court of Justice, 1951-54: Point of Substantive Law, *The British Year Book of International Law*, 1954, p. 382.)

In another article, Sir Gerald states: "It should ... be noticed that since the Court had already found that the general rules of international law, as laid down by the Court, did in themselves justify the Norwegian delimitation, it was strictly unnecessary for it to go into the issue of historic rights. Nevertheless, the Court did so and found in favour of Norway on that question also. There was, however, an important difference between the doctrine of historic rights as put forward by Norway and as found by the Court." (The Law and Procedure of the International Court of Justice, 1951-54: General Principles and Sources of Law, *Ibid.*, 1953, p. 27.)

2. *National cases*

163. Decisions of municipal judicial bodies recognizing the territoriality of certain bays have invariably been based on the special circumstances of each particular case. The section of this paper which discusses the practice of States reproduces the relevant passages from the municipal judicial decisions concerning certain bays, e.g. Chesapeake Bay, Conception Bay and Delaware Bay (*supra*, paras. 16-23).[185]

D. *The proof of historic title*

1. *The onus of proof*

164. Basis of Discussion No. 8 drafted by the Preparatory Committee of Codification Conference, 1930, states that the onus of proving usage is upon the State which seeks to rely on it (*supra*, para. 87). In replying to the list of points prepared by that Committee (*supra*, para. 93), the German Government expressed the opinion that "as regards 'historic bays', it would seem right in principle to require the coastal State making such a claim in respect of bays exceeding six nautical miles in width to prove that the bay has acquired the status of 'inland waters' of the coastal State through long usage generally recognized by other States".

165. Gidel comments on this point as follows:[186]

"The onus of proof rests on the State which claims that certain maritime areas close to its coast possess the character of inland waters which they would not normally possess. The coastal State is the petitioner in this sort of action. Its claims constitute an encroachment on the high seas; and it would be inconsistent with the principle of the freedom of the high seas, which remains the essential basis of the whole public international law of the sea, to shift the onus of proof onto the States prejudiced by that reduction of the high seas which is the consequence of the appropriation of certain waters by the claimant State."

166. In the Fisheries Case, the United Kingdom and Norway were in agreement that the onus of proof was upon the State claiming a historic title. They expressed different opinions, however, on the conditions which have to be made in order to discharge that onus and especially on the nature of the evidence to be produced.[187]

2. *The elements of proof*

167. Since the basic element underlying the theory of historic bays — at least as that theory was originally conceived — is "usage", one must inquire how such usage can be proved. Article 11 of the project sub-

[185] These decisions were interpreted differently by the parties in the Fisheries Case (see, in particular, the Counter-Memorial of Norway, *I.C.J. Pleadings, Oral Arguments, Documents, Fisheries Case, Judgement of 18 December 1951*, vol. I, paras. 541, 543 and 544; the Reply of the United Kingdom, *ibid.*, vol. II, paras. 438, 440 and 441).

[186] *Op. cit.*, p. 632.

[187] *I.C.J. Pleadings, Oral Arguments, Documents, Fisheries Case, Judgement of 18 December 1951*, vol. I, Counter-Memorial of Norway, p. 556; *ibid.*, vol. II, Reply of the United Kingdom, p. 645.

mitted in 1933 to the International Conference of American States by the American Institute of International Law (*supra*, para. 81) regards as "historic" the bays over which the coastal States have traditionally exercised and maintained their sovereign ownership, either by provisions of internal legislation and jurisdiction, or by deeds or writs of the authorities. According to that definition, before a State can claim a historic title to a bay it must have exercised its sovereignty over that bay. The mere claim of sovereignty does not, therefore, suffice; to satisfy the terms of the definition, sovereignty has to be exercised effectively. On the other hand, the exercise of sovereignty can, according to the definition, be proved by reference to measures under municipal law.[168]

168. In the Fisheries Case, Norway made the following statement:[169]

"It cannot be seriously questioned that, in the application of the theory of historic waters, the acts of municipal authority by the coastal State occupy an essential place.

"The existence of a historic title necessarily implies the accomplishment of such acts. The basis of the title is the exercise of sovereignty, which, provided that it is peaceful and continuous, gains international recognition and takes its place in the international legal order."

169. After an analysis of the title of ownership resulting from occupation and of the title which derives from historic continuity, Norway contended that:

"In both cases, therefore, — in occupation and in prescription — the exercise of territorial sovereignty is essential.

"How can such sovereignty be asserted? First and foremost by acts of municipal authority (laws, regulations, administrative measures, judicial decisions, etc.)."

170. In its Rejoinder, when explaining its position regarding the importance of "international recognition" in the acquisition of a historic title, Norway added:[170]

"It is certain that a State can only invoke a historic title if it is in a position to prove the existence of a *peaceful* and *continued* usage. A State which asserted its sovereignty over certain sea areas but failed to exercise that sovereignty effectively, or, because of the opposition of other States, did not succeed in exercising a sufficient degree of sovereignty, cannot rely on such usage. Hence, the attitude of other States is an element which should be taken into consideration.

"But the Norwegian Government does not share the opinion of the United Kingdom Government either concerning the weight to be attached to that element or on the circumstances in which it becomes relevant.

...

"The United Kingdom Government regards usage as *merely evidence of the acquiescence of other States*. In that Government's view, the decisive factor, *indeed the only one capable of legitimating the claim of the coastal State, is the acquiescence of other States*.

"The Norwegian Government believes that the essence of a historic title can never be reduced to such a simple formula.

"In the explanation offered by the opposing Party, it is argued that the historic title is merged in the title based on recognition (unilateral or by treaty). Yet the legal effects of peaceful and continued usage derive from a principle very different from that applicable to recognition.

"In reasoning as it does, the United Kingdom Government seems to overlook the fact that in the creation of historic title one of the essential factors is *time*.

"In recognition, *time* plays no part whatsoever. Juridically, recognition may be instantaneous. Nor does it lose any of its force thereby, *because in recognition the decisive and only factor is acquiescence*.

"A historic title can never be acquired unless it is supported by *long usage*. *In such a title, the essential factor is duration*. Admittedly, a usage which has acquired validity with the passage of time must also have been *peaceful and continuous*. If it had not been, it would never have acquired validity. But — as the word itself shows clearly enough — a 'historic' title derives its force from history, that is to say from *the passage of time*.

"The United Kingdom Government, it is true, recognizes that this time element is necessary; but it only considers this element in the light of what it [that Government] considers the sole test: the acquiescence of other States. In its view, 'the passage of time — that is the long duration of usage — is a vital element in the title *as supplying evidence of the implied acquiescence of other States in the claim*' (para. 311 (10)). (Our italics.)

"The acquisition of juridical force through the passage of time is, however, based on something very different. It is explained by *the need for stability*.

"A situation which has subsisted peacefully over a long period comes to be regarded as permanent; it becomes part of the general legal order, unless there are compelling reasons for excluding it therefrom. In Fauchille's words 'Since the interests of the international community demand peaceful relations, the rights of States must, after a certain time, be made secure against any attack.' (*Traité de Droit international public*, vol. I, part II, p. 757.)

"This principle, which stands on its own merits, independently of the acquiescence of States, certainly plays an important part in the notion of historic titles."

171. By contrast, the reply of the United Kingdom states:[171]

"... Municipal decrees and other acts of municipal authority have no higher significance in an international tribunal than as relevant *facts* which show an exercise of State authority *but which may or may not be sufficient to establish an international right to exercise the State authority*. Whether or not municipal decrees and other acts of State authority in fact provide evidence of a title valid in international law necessarily depends not only upon the nature of the municipal act *but upon the rules of international law*. In an international tribunal the question in each case must always be: 'what interpretation is placed upon the municipal acts by international law?'"

172. Further on, the Reply continues:

"... The United Kingdom Government in effect maintains that the assertion of State authority, though essential to the establishment of a claim to maritime territory, is not sufficient and that, the rights of other States being affected, their acquiescence is required..."

173. Later, under the title "An historic title to an area of sea is acquired by prescription, not by occupation" the Reply states:

"Where the claim of title is to land which is a *res nullius* an' in which, therefore, other States possess no legal interest, the mere peaceful exercise of State authority in regard to the land suffices to establish the occupation. The *res nullius* is in law susceptible of occupation by the first comer and the exercise of State authority in regard to the land will be an exercise of exclusive State authority creating an appropriation binding on other States. In these cases, the sole question is whether the claimant State can establish, to use the words of the Permanent Court in the *Eastern Greenland case* (A/B 53, p. 46), '*l'intention et la volonté d'agir en qualité de souverain, et quelque manifestation ou exercise effectif de cette autorité*.' The long period of the exercise of State authority in these cases merely serves as confirmatory evidence of an occupation, which is equally valid without the long period, provided that the occupation already exists at the 'critical date', namely, the date when another State seeks to assert a rival authority (see the *Eastern Greenland case* (A/B 53, p. 45). No doubt the position will be much the same in a case where the dispute concerns a boundary the facts of which are confused or in a case where, as in the *Island of Palmas Arbitration*, the earlier status of the territory is obscure. In these classes of case the acquiescence of other States in the exercise of State authority upon which the claim of title is founded is irrelevant. The acts of State authority do not touch the rights of other States and the title is valid *ab initio*. The acts of State authority are thus *both essential and sufficient* to establish the title.

"Where, on the other hand, the claim is to waters of the sea which are not *res nullius*, the position is quite different. It matters not whether the legal status of the high seas be considered to be a *res communis*, as is the opinion of Sir Cecil Hurst, or whether it be considered to be a *res sui generis*, as is the opinion of Gidel. The legal incidents of the régime of the high seas are well understood. No one disputes that each and every State has both a right to claim for its nationals rights of navigation and fishing in the high seas and a competence to exercise exclusive jurisdiction over all vessels of its flag on the high seas. Hence, a claim to exclusive sovereignty over areas of sea beyond the generally recognized limits of maritime territory directly touches and derogates from the existing rights of other States. Such a claim is not like a claim to a *res nullius* (occupation) because it interferes with established rights. It is a case of prescription and is open to the challenge that in origin it is 'illegal and invalid', as the Permanent Court said of the attempted Norwegian occupation of Eastern Greenland (A/B 53, p. 64), because at the critical date Eastern Greenland was not *res nullius*. Where prescription is involved, it is not sufficient to prove the exercise of State authority by acts under municipal law. It is necessary to show both a long and continuous exercise of State authority and also acquiescence in that exercise by other States."

174. In his dissenting opinion in the Fisheries Case, Sir Arnold McNair states:[172]

"... to constitute an historic bay it is not sufficient merely to claim a bay as such, though such claims are not uncommon. Evidence is required of a long and consistent assertion of dominion over the bay and of the right to exclude foreign vessels except on permission. The matter was considered by the British Privy Council in the case of Conception Bay in Newfoundland in *Direct United States Cable Company v. Anglo-American Telegraph Company* (1877) 2 Appeal Cases 394. The evidence relied upon in that case as justifying the claim of an historic bay is worth noting. There was a Convention of 1818 between the United States of America and Great Britain which excluded American fishermen from Conception Bay, followed by a British Act of Parliament of 1819, imposing penalties upon 'any person' who refused to depart from the bay when required by the British Governor. The Privy Council said:

'It is true that the Convention would only bind the two nations who were parties to it, and consequently that, though a strong assertion of ownership on the part of Great Britain, acquiesced in by so powerful a State as the United States, the Convention, though weighty, is not decisive. But the Act already referred to... goes further'... 'No stronger assertion of exclusive dominion over these bays could well be framed.' [This Act] 'is an unequivocal assertion of the British legislature of exclusive dominion over this bay as part of the British territory. And as this assertion of dominion has not been questioned by any nation from 1819 down to 1872, when a fresh Convention was made, this would be very strong in the tribunals of any nation to show that this bay is by prescription part of the exclusive territory of Great Britain...'"

175. Later, Sir Arnold states:

"Another rule of law that appears to me to be relevant to the question of historic title is that some proof is usually required of the exercise of State jurisdiction, and that the independent activity of private individuals is of little value unless it can be shown that they have acted in pursuance of a licence or some other authority received from their Governments or that in some other way their Governments have asserted jurisdiction through them."

176. Referring to the nature of the evidence which is required, Gidel[173] expresses the following opinion:

"It is hard to specify categorically what kinds of acts of appropriation constitute sufficient evidence; the exclusion from these areas of foreign vessels and their subjection to rules imposed by the coastal State which exceed the normal scope of regulations made in the interests of navigation would obviously be acts affording convincing evidence of the State's intent. It would, however, be too strict to insist that only such acts constitute adequate evidence..."

177. Similarly, Bourquin[174] states that:

"... The State which forbids foreign ships to penetrate the bay or to fish therein indisputably demonstrates by such action its desire to act as the sovereign.

"There are, however, some borderline cases. Thus, the placing of lights or beacons may sometimes appear to be an act of sovereignty, while in other circumstances it may have no such significance."

178. Gidel and Bourquin were referring to the award of the special arbitral tribunal convened in 1909 at The Hague to deal with the question of the delimitation of a certain part of the maritime boundary between Norway and Sweden. One of the circumstances which

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[168] Bustamante, the author of the project in question, states: "... when attempt is made to determine what is to be understood by the word 'historic', some Governments maintain that to the traditional possession of the bay, there must be added the consent of other States.

"It is very dangerous, because this last condition lends itself to notable abuses. No one specifies from how many and from which States this conformity must proceed, or what is the legal value of one or various divergent opinions. In respect to a certain bay, the continuous possession of which is claimed by a coastal State by right of sovereignty, no controversies or difficulties have ever arisen, either on account of its distance from the great maritime and commercial currents of the Globe, because the opportunity of expounding and solving doubtful questions has not presented itself. It is inadmissible that such circumstances should suffice to deprive the bay of its historic character" (*op. cit.*, pp. 99 and 100).

[169] *I.C.J. Pleadings, Oral Arguments, Documents, Fisheries Case (United Kingdom v. Norway), Judgment of 18 December 1951*, vol. I, Counter-Memorial of Norway, para. 364, pp. 567 and 568.

[170] *Ibid.*, vol. III, paras. 574-576, pp. 452 and 453.

[171] *Ibid.*, vol. II, Reply of the United Kingdom paras. 475-477, pp. 647-649.

[172] *Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951; I.C.J. Reports, 1951*, p. 164.

[173] *Op. cit.*, p. 633.

[174] *Op. cit.*, p. 43.

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the tribunal held to constitute evidence supporting the Swedish claim was:

"... The circumstance that Sweden has performed various acts in the [disputed waters], especially of late, owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty."[196]

179. In the Fisheries Case, the International Court of Justice found that:

"The Norwegian Government has relied upon an historic title clearly referable to the waters of Lopphavet [*supra*, para. 71], namely, the exclusive privilege to fish and hunt whales granted at the end of the 17th century to Lt.-Commander Erich Lorch under a number of licences which show, *inter alia*, that the water situated in the vicinity of the sunken rock of Gjesbaun or Gjesbaene and the fishing grounds pertaining thereto were regarded as falling exclusively within Norwegian sovereignty ..."

180. In his separate opinion, Judge Hsu Mo pointed out that:

"With regard to the licences for fishing granted on three occasions by the King of Denmark and Norway to Erich Lorch, Lieutenant-Commander in the Dano-Norwegian Navy towards the close of the 17th century, I do not think that this is sufficient to confer historic title on Norway to Lopphavet. In the first place, the granting by the Danish-Norwegian Sovereign to one of his subjects of what was at the time believed to be a special privilege can hardly be considered as conclusive evidence of the acquisition of historic title to Lopphavet *vis-à-vis* all foreign States. In the second place, the concessions were limited to waters near certain rocks and did not cover the whole area of Lopphavet. Lastly, there is no evidence to show that the concessions were exploited to the exclusion of participation by all foreigners for a period sufficiently long to enable the Norwegian Government to derive prescriptive rights to Lopphavet."[198]

3. *Evidence of international recognition*

181. It has been shown that, according to some schools of thought, international recognition is a decisive factor in the acquisition of historic title. Now the question is what form the recognition should take. Must it be universal? Must it be express, or can it be inferred from absence of opposition? And, in a case where a State has expressly recognized the territoriality of a bay, to what extent is that recognition valid *vis-à-vis* States which have abstained from lodging objections?

182. On this point Raestad says:[197]

"Since prescription, as it is known in municipal law, does not exist in international law, except where provision is made for it in treaties, a situation which has existed for a long period is only recognized by the law of nations if the prolonged existence of that state of affairs proves the tacit consent of States; the consent of the States most directly concerned, by reason of proximity or other circumstance, binds also the States less directly concerned and those which acquired an interest in that state of affairs subsequently ..."

183. Fauchille[199] makes the following comment:

"As every State has the right to renounce any right vested in it, we believe that States which have expressly consented to respect the territoriality of a bay which previously, because of its size, constituted an open sea, and consequently an area in which they were entitled to navigate freely, would be estopped from objecting to the coastal State's exercise of exclusive sovereignty in that bay. But should the territorial status of that bay also be regarded as binding on States which simply abstained from objecting? Can such abstention be equivalent to consent? This seems rather more doubtful. Many jurists have indeed disputed the soundness of the theory of historic bays. Perels, for example, states (in his *Droit maritime*, p. 35) that 'the unilateral exercise of alleged rights, even if it does not evoke any objections from other States (either because they are acting in collusion or because they are impotent to resist), can never be placed against those which have not acquiesced, either expressly or by conduct showing an unmistakable intention'..."

184. Gidel[199] expresses the following opinion:

"It is a particularly delicate matter to determine, in general terms, the conditions which the established 'usage' must fulfil; it seems impossible to insist that the recognition of that usage should either be 'universal' in the strict sense of the word, or express. A single objection formulated by a single State will not invalidate the usage; furthermore, all objections cannot be placed on an equal footing, regardless of their nature, the geographical or other situation of the objecting State ..."

185. The judgement of the International Court of Justice in the Fisheries Case contains some significant statements on this subject (*supra*, para. 66).[200] The Court held that the absence of "opposition on the part of other States" was a circumstance supporting the validity of the Norwegian system of the delimitation, of which it established "the existence and the constituent elements". The Court said in this connexion:

"The Court, having thus established the existence and the constituent elements of the Norwegian system of delimitation, further finds that this system was consistently applied by Norwegian authorities and that it encountered no opposition on the part of other States."

186. Some paragraphs later, the judgement says:

"Norway has been in a position to argue without any contradiction that neither the promulgation of her delimitation Decrees in 1869 and in 1889, nor their application, gave rise to any opposition on the part of foreign States. Since, moreover, these Decrees constitute, as has been shown above, the application of a well-defined and uniform system, it is indeed this system itself which would reap the benefit of general toleration, the basis of an historical consolidation which would make it enforceable as against all States.

"The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact ..."

187. And in a subsequent passage, the Court adds:

"The Court notes that in respect of a situation which could only be strengthened with the passage of time, the United Kingdom Government refrained from formulating reservations.

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[196] Scott, *op. cit.*, p. 130.

[197] *Fisheries case (United Kingdom v. Norway), Judgement of 18 December 1951, I.C.J. Reports 1951*, p. 157.

[198] *Op. cit.*, p. 174.

[199] *Op. cit.*, p. 382.

[200] *Op. cit.*, p. 634.

[200] As regards the attitude of the Parties on this subject, see, particularly, the Reply of the United Kingdom (vol. II, pp. 652-659) and the Rejoinder of Norway (vol. III, pp. 457-461).

"The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom."

188. Sir Gerald Fitzmaurice, commenting on the Court's judgement[201] under the title "The criterion of 'absence of opposition'", makes the following statement:

"It will be seen that in these passages[202] the Court (in contradistinction to the more positive criteria of the minority Judges) set up the test of absence of opposition by other States. How far is this test conclusive? Clearly, absence of opposition is relevant only in so far as it implies consent, acquiescence or toleration on the part of the States concerned; but absence of opposition *per se* will not necessarily or always imply this. It depends on whether the circumstances are such that opposition is called for because the absence of it will cause consent or acquiescence to be presumed. The circumstances are not invariably of this character, particularly for instance where the practice or usage concerned has not been brought to the knowledge of other States, or at all events lacks the notoriety from which such knowledge might be presumed: or again, if the practice or usage concerned takes a form such that it is not reasonably possible for other States to infer what its true character is. These proved to be the crucial points of the historic aspects of the Norwegian case."[203]

189. Later, in a section entitled "Protests, Admissions", Sir Gerald makes the following statement:[204]

"... in certain circumstances failure to protest may amount to an admission, and an admission may be implied from silence or inaction."

The author develops this statement by citing passages from the Court's judgements in the Fisheries Case, in the Minquiers and Ecrehous Case (1953) and in the case concerning the rights of United States of America nationals in Morocco (1952).[205]

E. *The time factor in the acquisition of an historic title*

190. Is there some specified period of time which must elapse before an historic title is acquired? Expressions such as "of long standing", "immemorial", "confirmed by time" or "well-established", which occur both in judicial decisions and in the works of authors, all suggest a fairly long period but do not give a clear indication of its exact duration.

191. Scelle,[206] who admits prescription as a mode of acquiring rights in international law, states that the period of prescription "is indeterminate [in international law] and must in each case be submitted to the test of reasonableness".

192. Judge Alvarez,[207] in his separate opinion in the Anglo-Norwegian Fisheries Case, states that:

"International law does not lay down any specific duration of time necessary for prescription to have effect. A comparatively recent usage relating to the territorial sea may be of greater effect than an ancient usage insufficiently proved."

193. Sir Gerald Fitzmaurice[208] expresses the following view on this subject:

"... the passage of an appreciable period of time is necessary for the acquisition or formation of historic rights, because if the essential role of the historic element is to supply an inference of acquiescence on the part of other States, arising from their inactivity coupled with the passage of time — then time must be allowed to pass."

194. After citing the extract from the separate opinion of Judge Alvarez quoted above, Sir Gerald Fitzmaurice comments on it as follows:[209]

"If the emphasis is placed on the words 'comparatively' and 'insufficiently proved', this pronouncement is fully acceptable, but it is even so more applicable to the case of the formation

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[201] "The Law and Procedure of the International Court of Justice, 1951-54: General Principles and Sources of Law", *British Year Book of International Law*, 1953, pp. 1-70.

[202] The passages in question are extracts from the Court's judgement which the author cites in the preceding paragraph of his article in order to show the Court's attitude on the element of "recognition" or consent. That paragraph reads as follows:

"*The consent of other States necessary.* While finding in favour of Norway that other States — and in particular the United Kingdom — must be held to have acquiesced in the Norwegian system of delimitation, the Court did not adopt the Norwegian theory of the absolute and conclusive character, as against all the world, of a long-continued national usage *per se*. It considered the acquiescence, the consent in some form, or at least the toleration, of other States, to be necessary. This is apparent from such passages as the following (*I.C.J. Reports*, 1951, pp. 136-7):

'The Court, having thus established the existence and the constituent elements of the Norwegian system of delimitation, further finds that this system was consistently applied by Norwegian authorities and that it encountered no opposition on the part of other States.'

and again (p. 138):

'From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from foreign States.'

Similarly (*ibid.*):

'The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact.'

and (at p. 139):

'The notoriety of the facts, the general toleration of the international community, ... would in any case warrant Norway's enforcement of her system ....

'The Court is thus led to conclude that the method ... established in the Norwegian system ... had been consolidated by a constant and sufficiently long practice, in the face of which the attitude of governments bears witness to the fact that they did not consider it to be contrary to international law.'

The Judges delivering separate or dissenting opinions took a like view on this point. Thus, Judge Hsu Mo (*ibid.*, p. 154) referred to Norway's 'consistent past practice which is acquiesced in by the international community as a whole'. Judge Read (p. 194) said:

'If it can be shown that the Norwegian system has been recognised by the international community, it follows that it has become the doctrine of international law applicable to Norway, either as special or as regional law.'

Later (at p. 195), he spoke of a Norwegian system

'... applicable or applied to the coasts in question; known to the world; and acquiesced in by the international community.'

[203] *Ibid.*, p. 33.

[204] *Ibid.*, p. 42.

[205] *Ibid.*, pp. 42-47.

[206] *Op. cit.*, p. 435.

[207] *Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951; I.C.J. Reports, 1951*, p. 152.

[208] *Op. cit.*, pp. 30-31.

[209] *Op. cit.*, p. 31.

by usage of a new general rule of customary international law than to the acquisition of specific and special rights by an individual State on a prescriptive basis. Professor Lauterpacht has recognized this distinction in the following passage: [1]

'However, assuming ... that the emergence of the doctrine of sovereignty over the adjacent areas consituted a radical change in pre-existing international law, the length of time within which the customary rule of international law comes to fruition is irrelevant.[2] For customary international law is not yet another expression for prescription.[3] A "consistent or uniform usage practised by the States in question" — to use the language of the International Court of Justice in the *Asylum Case [I.C.J. Reports*, 1950, p. 276] — can be packed within a short space of years. The "evidence of a general practice as law" — in the words of Article 38 of the Statute — need not be spread over decades. Any tendency to exact a prolonged period for the crystallization of custom must be proportionate to the degree and the intensity of the change that it purports, or is asserted, to effect.'

"A new rule of customary law based on the practice of States can in fact emerge very quickly, and even almost suddenly, if new circumstances have arisen that imperatively call for legal regulation — though the time factor is never wholly irrelevant: but the acquisition of prescriptive rights by individual States, contrary to the exisfing (and otherwise still subsisting) international order, involves different considerations and criteria, that make the passage of time, and an appreciable period of time at that, essential at any rate in all those cases (which are the type of the true prescriptive or historic claim) where the positive consent or express recognition of States cannot be shown."

"1 'Sovereignty over the Submarine Areas', *British Year Book of International Law*, 27 (1950), p. 393."

"2 Or perhaps not so much irrelevant as not determinent *per se*."

"3 This is obviously correct, but the two have important features in common. Both depend on the establishment of a practice or usage — one general and the other particular — and each derives its eventual legal sanction from some form of consent on the part of States — either general acceptance in the one case, and in the other specific recognition or tacit acquiescence. Apart from any difference in the time factor, the *method* (practice and assent) is the same both for the establishment of new customary law and for the acquisition of prescriptive or historic rights."

195. Bourquin [210] notes that, by contrast with municipal law (where the prescriptive period for usucapion is laid down by precise rules), international law does not, for the purpose of the acquisition of historic title, contain any rule laying down a specific period. He adds:

"... As far as the so-called historic bays are concerned, the question is of no practical interest. The usage on which the State relies in such a case goes back to the most distant past. It is an immemorial usage, in the strict sense of that word.

"We should not forget that the general trend of the development of the law of the sea in modern times is characterized by a gradual shrinkage of the maritime territory of States.[1] In principle, it is not the sovereignty of the State which has spread at the expense of the high seas but the high seas which have spread by absorbing areas previously subject to the authority of the State. Consequently, the waters in respect of which an historic title is claimed are not waters which the coastal State has appropriated at a more or less recent date, but waters which have always formed part of its territory and which have never been a portion of the high seas ..." [211]

"1 We are now witnessing — for reasons too elaborate to set forth here — a reverse trend, a reaction against any excessive reduction of the prerogatives of the coastal State. But from the time of the *Mare liberum* Grotius until the Codification Conference of 1930 the dominating influence had been the desire to extend the area of the high seas."

[210] *Op. cit.*, p. 49.

196. The author cites Baldoni,[212] who says:

"... At the time when the rule of the freedom of the seas was asserting itself, the Bays of Cancale, Chaleurs, Chesapeake, Conception, Delaware, Fonseca and Miramichi were already under the effective permanent sovereignty of the coastal States. The principle of the freedom of the seas had accordingly never applied to them. It is unnecessary, therefore, in order to explain the coastal State's title thereto, to rely on any rules of prescription or, as others believe, on some supposed special rules created as exceptions to the principle of the freedom of the high seas. The status of these bays can be explained — by analogy with our treatment of the other parts of the territorial sea — by the general rule governing occupation, the application of which, even in the present case, is not excluded by any rule of an exceptional nature. Consequently, the status of historic bays is not, as the authorities generally contend, exceptional. Their status is normal, because it derives from a fundamental principle of the law of nations. We may add, though strictly in passing, that some of these bays, such as Chesapeake and Delaware, are of such configuration and size that they can so surely be regarded as accessory to the coasts surrounding them that no further inquiry of any kind is necessary to establish that they are not subject to the principle of the high seas."

F. *The notion of continuity in the formation of a historic title*

197. As has been shown above (para. 141), some draft codes qualify the "usage" which gives rise to a historic title by the adjective "continuous". In other words, according to these drafts a historic title cannot be acquired without proof of "continuous usage".

198. In the Fisheries Case, the International Court of Justice, after having established the existence and the constituent elements of the Norwegian system of delimitation, held "that this system was 'consistently' applied by Norwegian authorities". In that connexion, it considered the documents on which the United Kingdom based its contention that the Norwegian Government had not consistently followed the principles of delimitation which, it claimed, formed its system. The Court concluded as follows: [213]

"The Court considers that too much importance need not be attached to the few uncertainties or contradictions, real or apparent, which the United Kingdom Government claims to have discovered in Norwegian practice. They may be easily understood in the light of the variety of the facts and conditions prevailing in the long period which has elapsed since 1812, and are not such as to modify the conclusions reached by the Court.

"In the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose."

[211] Norway expressed a similar opinion in the Fisheries Case (see Rejoinder, para. 561).

[212] "Les navires de guerre dans les eaux territoriales étrangères", Academy of International Law, *Recueil des Cours*, 1938, vol. III, pp. 221-222.

[213] See *supra*, para. 65.

III. Scope of the theory of historic bays

199. The application of the theory is not limited to bays. It tends to be applied also to straits, to the waters within archipelagos and, generally, to the various areas capable of being comprised in the maritime domain of the State.

200. Article 2 of the draft covention adopted in 1936 by the International Law Association refers to all such maritime areas in general terms, as follows: [214]

"... each maritime State shall exercise territorial jurisdiction within the limits hereinafter provided and not further, save to the extent that jurisdiction is conferred by ... or established usage generally recognized by Nations."

201. At the eighth plenary meeting of the 1930 Conference on the Codification of International Law, Mr. Giannini, the Italian representative, said that the Second Committee: [215]

"... recognized that there were historic situations — 'historic' bays, although the use of the adjective was criticized. This conception was also extended from bays to certain historic waters. It will be the first time that this adjective used in this sense will appear in official documents."

202. At the eleventh meeting of the Second Committee of that Conference, Mr. Miller, the representative of the United States of America, criticized the expression "historic bays". In his view: [216]

"Both words are inaccurate — both 'historic' and 'bays'. It is a question, so far as the latter word is concerned, of waters, not merely waters that either from habit or technical definition are called bays, but waters by whatever name they may have generally or technically have been called. Furthermore, the word 'historic' is an inaccurate word, because it is not only a question of history, it is also a question of the national jurisdiction of the coastal State. That, I submit, is the question involved in regard to these waters, and the continual use of the expression 'historic bays', with mention of one or two bays here and there in different parts of the world, has led to a great deal of confusion of thought as to the principles which are involved."

203. The United States delegation consequently submitted an amendment to Basis of Discussion No. 8, in the following terms: [217]

"Waters, whether called bays, sounds, straits, or by some other name, which have been under the jurisdiction of the coastal State as part of its interior waters, are deemed to continue a part thereof."

204. It should be noted that in the Fisheries Case the International Court of Justice recognized as consistent with international law the Norwegian argument that all the waters [218] within the limits drawn by the Decree of 1935 were historically Norwegian waters.

205. A statement of special significance in this context is that made by the Court regarding the Lopphavet basin, which it refused to characterize as a bay (*supra*, paras. 70-71):

"Even if it were considered that in the sector under review the deviation was too pronounced, it must be pointed out that the Norwegian Government has relied upon a historic title clearly referable to the waters of Lopphavet ..."

206. And later:

"The Court considers that, although it is not always clear to what specific areas they apply, the historical data produced ... lend some weight to the idea of the survival of traditional rights reserved to the inhabitants of the Kingdom ... Such rights, founded on the vital needs of the population and attested by very ancient and peaceful usage, may legitimately be taken into account in drawing a line which, moreover, appears to the Court to have been kept within the bounds of what is moderate and reasonable."

Part III

Various suggestions made at the First Codification Conference of The Hague (1930) for the solution of the problem of historic bays

207. The Preparatory Committee of the First Codification Conference of The Hague (1930) suggested that "it would be convenient that at the Conference the Governments should state what are the bays which they claim to be historic bays and what are the roadsteads for which they claim to have the territorial-waters belt measured from the exterior boundary of the roadstead". [219]

208. At the eleventh meeting of the Second Committee of that Conference, held on 28 March 1930, Mr. Giannini, the Italian representative, submitted a proposal in the following terms: [220]

"The Conference expresses a *voeu* that the Communications and Transit Committee should appoint a special Committee to study what are the so-called historic bays, and what is their present *de facto* and *de jure* situation, with a view to collecting the data necessary to codify their legal status at a subsequent Conference for the Codification of International Law."

209. In 1930, Antonio Sanchez de Bustamante y Sirven prepared a study of the territorial sea [221] which was transmitted, through the American Institute of International Law, to the First Codification Conference

[214] *Report of the Thirty-fourth Conference*, 1926, p. 43. See also article 12 of the draft contained in *Harvard Research* (*supra*, para. 83), articles 11 and 16 of the draft submitted in 1933 to the Tenth International Conference of American States (*supra*, para. 81) and the Report of the Second Committee of the Codification Conference, 1930 (*supra*, para. 90).

[215] Ser. L.o.N.P. 1930.V.14, p. 53.

[216] Ser. L.o.N.P. 1930.V.16, p. 107.

[217] *Ibid.*

[218] All the Norwegian coastal waters within the straight baselines following the general direction of the coast. The Court stressed that the Norwegian coast meant the outer contour of the "*skjaergaard*", i.e. "all the islands, islets, rocks and reefs ...". Furthermore, "within the '*skjaergaard*', almost every island has its large and its small bays; countless arms of the sea, straits, channels and mere waterways serve as a means of communication for the local population ...". (*Fisheries Case (United Kingdom v. Norway), Judgement of 18 December 1951, I.C.J. Reports, 1951*, p. 127).

[219] Ser. L.o.N.P. 1929.V.2, p. 64.

[220] Ser. L.o.N.P. 1930.V.16, pp. 112-113.

[221] *The Territorial Sea*, 1930 (already cited).

of The Hague. In this study, the eleventh chapter of which contains a "Project of Convention" on the juridical regime of the territorial sea, the author states:[222]

"It appears necessary that the Convention should define these historic bays, in order that it be their fundamental element, the exercise or uninterrupted sanction of their character, that determines the recognition of this quality. The permanent right of the coastal State may be proved, both by the provisions of its internal legislation, if it has such, and by acts of jurisdiction and of government as well as by declarations previous to the signing of the proposed Convention by the competent authorities.

"Some means must, however, exist so as to avoid future abuses, as well as discussions and conflicts. With this aim, the Project of Convention establishes that every country having historic bays, within the definition that it contains, shall specifically state this on depositing its ratification. And as claims from third parties may arise, the opportunity to try them and the jurisdiction to decide them must not be passed over in silence. These claims we shall in due time discuss and formulate in view of the maximum extent of territorial waters."[223]

Article 11 of the "Project of Convention" gives a definition of historic bays (*supra*, para. 81). The other relevant articles are 18 to 25, which are worded as follows:[224]

"Art. 18. Territorial sea has an exterior maritime zone three miles wide, of sixty to the degree of longitude on the Equator, and starting from the interior limits indicated in this Convention.

"Art. 19. The contracting States which maintain, for all purposes or for some, a greater extent which has been fixed previous to the signing of the present Convention, shall declare this extent when depositing their respective ratification or when adhering to same.

"Art. 20. Such declaration shall be communicated at once by the Secretariat of the League of Nations to all other contracting or adhering States, which may oppose it within a period of six months from the notification, if not in accord with the conditions established in the foregoing article.

"Art. 21. Each State ratifying the present Convention or adhering thereto after the said declaration has been made, shall also be notified in the same manner, and may oppose it within the six months that follow its notification or adhesion, or take part in the current legal procedure, save in the event of an already existing judicial or arbitrary decision.

"Art. 22. The opposition shall be communicated to the Secretariat of the League of Nations, which shall notify thereof the remaining contracting parties or adherents.

"Art. 23. The opposing State stall be obliged, within another six months following reception of advice of opposition by the Secretariat of the League of Nations, and if it has not solved the difficulty through direct diplomatic negotiations between those interested, to submit it to the decision of third parties, in the manner established in the Conventions which it has in force with the opposed State, and, in the absence of this, to the Permanent Court of International Justice, if both of them were signatories of the Statute. In the event that neither of these cases should be applicable to them, the difference shall be submitted to arbitration.

"Art. 24. The procedure adopted according to the foregoing article, shall be immediately notified by the opposing State, and authentic copies of documents recording the results shall be furnished to the Secretariat of the League of Nations, and the latter shall also immediately transmit these copies and notify the other contracting States or adhering to the Convention, that may take part in the same procedure, although without intervening in the appointment of the arbitrary Court or in the organization and constitution of any other means of conciliation or decision that may have been accepted.

"Art. 25. The rules established in the foregoing articles 19 to 24 shall be applicable also to the bays, estuaries and straits comprised in articles 11 and 16 of the present Convention."

[222] *Ibid.*, p. 100.

[223] *Ibid.*, pp. 109-111.

[224] *Ibid.*, pp. 143-144.

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JURIDICAL REGIME OF HISTORIC WATERS, INCLUDING HISTORIC BAYS

DOCUMENT A/CN.4/143

Study prepared by the Secretariat

[*Original text: English*]
[*9 March 1962*]

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I. Origin and background of the study

1. The present study was prepared by the Codification Division of the Office of Legal Affairs at the request of the International Law Commission. The Commission's decision to initiate the study was taken at its twelfth session (1960), in pursuance of General Assembly resolution 1453 (XIV) of 7 December 1959. The Assembly resolution was prompted by a resolution on the matter taken by the United Nations Conference on the Law of the Sea held in 1958 at Geneva. A brief review of these resolutions and of their background will help to clarify the purpose of the study.

2. At its eighth session (1956) the International Law Commission completed the final draft of its articles concerning the Law of the Sea[1] and this draft was subsequently referred by the General Assembly to the above-mentioned United Nations Conference on the Law of the Sea. Article 7 of the draft dealt with bays; paragraphs 1 to 3 contained a definition of a bay and laid down rules for the delimitation of internal waters in a bay (the coasts of which belong to a single State), while paragraph 4 read in part as follows:

"4. The foregoing provisions shall not apply to so-called historic bays ..."[2]

[1] See chapter II of the Report of the International Law Commission covering the work of its eighth session, 23 April-4 July 1956, *Official Records of the General Assembly, Eleventh Session, Supplement No. 9* (A/3159).

[2] *Ibid.*, pages 5 and 15.

3. Although much attention was given in the reports of the Special Rapporteur and in the discussions of the Commission to the substantive provisions on bays in article 7 in its successive stages of development, there is little in the records of the Commission to shed light on the concept of "historic bays" referred to in paragraph 4 of the article.

4. A clause regarding "historic bays" did not appear in the first two reports on the territorial sea prepared by the Special Rapporteur. He submitted, however, at the fifth session of the Commission, an addendum[3] to his second report in which he presented redrafts of certain articles contained in the second report, among them the article on bays. These new drafts were to a large extent inspired by solutions proposed by a group of experts to a number of technical problems which had been referred to them by the Special Rapporteur. As redrafted, the article on bays, in its first paragraph, gave a definition of "a bay in the juridical sense" and thereafter stated:

> "Historic bays are excepted; they shall be indicated as such on the maps."

In his third report,[4] submitted at the sixth session of the Commission, the Special Rapporteur transferred this clause regarding "historic bays" from the text of the article to the commentary. At the following session, he submitted a new redraft of the article on bays,[5] and in the text of that redraft the clause regarding "historic bays" reappeared. However, now the clause excepted "historic bays" not from the general definition of a bay but from the rules regarding the drawing of closing lines in bays. Another difference from the previous formulation of the clause was that the provision that "historic bays" should be marked on the maps, had been omitted.

5. In this form, i.e., as a proviso excepting "historic bays" from the rules regarding drawing closing lines in bays, the clause was included in article 7 (on bays) of the preliminary draft on the régime of the territorial sea which was adopted by the Commission at its seventh session and circulated to the Member States for observations.

6. In its reply[6] the Union of South Africa pointed out that the commentary accompanying the article seemed to indicate that the real intention of the Commission was to exempt "historic bays" not only from the rules on the drawing of closing lines but also from the other rules on bays laid down in the article. The Special Rapporteur and the Commission agreed, and the clause regarding "historic bays" was, consequently, in the final draft of the article formulated as set out above in paragraph 2 of this paper.

7. In the course of the discussions in the Commission of the article on bays in its successive formulations, only passing references were made to "historic bays". The debates, as a consequence, did not substantially contribute to the clarification of the concept.[7]

8. In order to provide the United Nations Conference on the Law of the Sea with material relating to "historic bays", a memorandum[8] on the subject was prepared by the Codification Division and circulated as a preparatory document of the Conference. It was pointed out in the memorandum that historic rights were claimed not only in respect of bays but also in respect of other maritime areas. However, as the purpose of the memorandum was to shed light on the concept of "historic bays" referred to in the draft of the International Law Commission, the emphasis was on this latter concept, and historic claims to other waters were dealt with only incidentally. The content of the memorandum was succinctly set out in its paragraph 5 as follows:

> "5. Part I describes the practice of States by reference to a few examples of bays which are considered to be historic or are claimed as such by the States concerned. Part I then proceeds to cite the various draft codifications which established the theory of "historic bays", and the opinions of learned authors and of Governments on this theory. Part II discusses the theory itself, inquiring into the legal status of the waters of bays regarded as historic bays, and setting forth the factors which have been relied on for the purpose of claiming bays as historic. The final section is intended to show that the theory does not apply to bays only but is more general in scope."[9]

9. The United Nations Conference on the Law of the Sea which met in Geneva on 24 February 1958 referred those articles of the International Law Commission draft dealing with the territorial sea and the contiguous zone, including article 7 on bays, to its First Committee. At the third meeting of the Committee, in connexion with the organization of the Committee's work, the representative of Panama proposed that the Committee should set up a sub-committee to examine the question of bays and in particular the problem of the legal status of "historic bays". The representative referred to the above-mentioned Secretariat memorandum and stated that it was

> "essential that the international instruments to be drafted by the Conference should deal with such questions as the definition of historic bays, the rights of the coastal State or States, the procedure for declaring a bay 'historic', the conditions for recognition by other States, and the peaceful settlement of disputes arising from objections by other States".

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[3] A/CN.4/61/Add.1, the French text of which is printed in *Yearbook of the International Law Commission, 1953*, volume II, page 76.

[4] A/CN.4/77, printed in French, in *Yearbook of the International Law Commission, 1954*, volume II, page 1.

[5] In A/CN.4/93, the French text of which is printed in *Yearbook of the International Law Commission, 1955*, volume II, page 5.

[6] A/CN.4/99, *Yearbook of the International Law Commission, 1956*, volume II, page 77.

[7] The question of bays was discussed at the fourth session in 1952, the seventh session in 1955, and the eighth session, in 1956; see, respectively, *Yearbook of the International Law Commission, 1952*, volume I, pages 188-190; *Yearbook, 1955*, volume I, pages 205-216, 251, 278, 279-80; and *Yearbook, 1956*, volume I, pages 190-193. In the 1955 discussion, Sir Gerald Fitzmaurice affirmed that the concept of "historic bays" formed part of international law (*Yearbook, 1955*, volume I, page 209), while Mr. García-Amador and Mr. Hsu (*ibid.*, pages 210 and 211) said that they had doubts about "historic bays". Mr. García Amador contended that this concept only benefited old countries having a long history and that there were many comparative newcomers to the international community—countries in Latin America, the Middle East and the Far East—which could not claim such historic rights. The reference to "historic bays" in the relevant article was, however, adopted without any member voting against it (*ibid.*, page 214).

[8] Historic Bays, Memorandum by the Secretariat of the United Nations (A/CONF.13/1), printed in *Official Records of the United Nations Conference on the Law of the Sea*, 1958, United Nations publication, Sales No.: 58.V.4, vol. I: Preparatory Documents, pages 1 *et seq.*

[9] *Ibid.*, page 2.

The work of the First Committee with respect to these problems would, in the opinion of the representative, be considerably facilitated if it appointed a sub-committee specifically concerned with the law relating to bays.[10]

10. After a short discussion of the matter in the First Committee, the Chairman suggested that, as the forthcoming general debate in the Committee would probably make clear what other sub-committees would be needed, and it was desirable to consider the composition of all the sub-committees at the same time, the Panamanian proposal should be held over for the time being, on the understanding that he would bring it before the Committee at an early convenient date. The representative of Panama agreed to that procedure.

11. In the discussion at the third meeting and the general debate in the First Committee, the Panamanian proposal won support from several delegations, in particular the delegations of Saudi Arabia, Yemen,[11] El Salvador,[12] and Pakistan,[13] while the representative of the United Kingdom[14] expressed doubts regarding the usefulness of a study of the matter by a sub-committee. The representative of the Federal Republic of Germany[15] said that he thought that it would be difficult to establish general rules applicable to "historic bays". Mr. J. P. A. François, the International Law Commission's special rapporteur on the law of the sea, who was present at the Conference as an expert to the Secretariat, also advised against setting up a sub-committee to deal with "historic bays". In his view, the Conference did not have at its disposal the material needed for a thorough study of the question, and the Conference might therefore

> "merely use the term 'historic bays' and leave it to be construed, in case of dispute, by the Court, with due regard for all the features of the special case, which could not possibly be provided for in a general rule".

If necessary, he added, the International Law Commission

> "could be instructed to study acquisition by prescription, with special reference to 'historic bays'".[16]

12. When the Panamanian proposal was taken up for decision at the twenty-fifth meeting of the First Committee,[17] the representative of India stated that although his delegation was highly interested in the question of "historic bays", he felt that the Committee had neither the time nor the material available to deal with the matter properly. Each bay, he said, having its own particular characteristics, a mass of data would have to be sifted and collated before any general principles could be established. Instead of setting up a sub-committee, the Conference should therefore adopt a resolution recommending that the General Assembly make arrangements for further study of the question of "historic bays" by whatever body it might consider appropriate. The representative of Panama indicated willingness to accept this idea put forth by India and consequently to withdraw his own proposal. At the suggestion of the Chairman, the Committee thereafter agreed to postpone its decision until the text of a joint proposal by the delegations of India and Panama along these lines had been submitted.

13. In the meantime, the delegation of Japan submitted a proposal containing a definition of "historic bays". The delegation proposed that paragraph 4 of article 7, on bays, should be replaced by the following text:

> "4. The foregoing provisions shall not apply to historic bays. The term 'historic bays' means those bays over which coastal State or States have effectively exercised sovereign rights continuously for a period of long standing, with explicit or implicit recognition of such practice by foreign States."[18]

The representative of Japan explained that his delegation has submitted this proposal because the definition of "historic bays" was part of the task of codification and could not be left to arbitral tribunals or courts dealing with particular disputes regarding such bays.[19] The definition included in the proposal had been prepared with the aid of the Secretariat's memorandum on "historic bays" (A/CONF.13/1).

14. The representative of Thailand agreed with the Japanese delegation that the definition of the term "historic bays" should not be left to any court or tribunal, but on the other hand he considered that the definition included in the Japanese amendment was not precise enough. The representative of the Soviet Union urged that the Japanese amendment should not be considered until the Committee was ready to take up the Indian-Panamanian proposal referred to above.[20]

15. At its forty-eighth meeting the First Committee had before it both the Japanese amendment to article 7 and a draft resolution submitted jointly by India and Panama and reading as follows:[21]

> *"The First Committee,*
>
> *"Considering* that the International Law Commission has not provided for the régime of historic waters including historic bays,
>
> *"Recognizing* the importance of the juridical status of such areas,
>
> *"Decides* to request the Secretary-General of the United Nations to arrange for the study of the régime of historic waters including historic bays and the preparation of draft rules which may be submitted to a special conference."

16. As far as the records of the meeting[22] show, no explanation was given why the subject of the proposed study in the joint draft resolution was described as "historic waters including historic bays", not merely "historic bays" which was the term used in paragraph 4 of article 7 and also in the original Panamanian proposal to set up a sub-committee. When introducing the draft resolution, one of the sponsors used the term "historic waters" while the other used the term "historic

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[10] *Official Records of the United Nations Conference on the Law of the Sea, Volume III, First Committee*, page 2.

[11] *Ibid.*

[12] Op. cit., page 48.

[13] Op. cit., page 51.

[14] Op. cit., page 9.

[15] Op. cit., page 45.

[16] Op. cit., page 69.

[17] Op. cit., page 74.

[18] A/CONF.13/C.1/L.104, op. cit., page 241.

[19] Op. cit., pages 145, 198.

[20] Op. cit., pages 146, 198.

[21] A/CONF.13/C.1/L.158, op. cit., page 252.

[22] Op. cit., pages 147-148. It may be of interest in this respect to note that during the deliberations in the First Committee the question of an historic title to maritime areas came up not only in regard to bays but also in connexion with the problem of the delimitation of the territorial seas of two States whose coasts are opposite or adjacent to each other (article 12 of the Convention on the Territorial Sea and the Contiguous Zone); see op. cit., pages 187-193.

bays", and in the debate some speakers used the former, others the latter, term.

17. The attention of the Committee was in fact focused on other aspects of the draft resolution. It was in particular pointed out that the resolution should rightly be in the name of the Conference not of the First Committee, and also that it was more seemly for the Conference to address itself to the General Assembly than to the Secretary-General. Both these points were admitted by the sponsor. Another change which was of more substantive importance was also accepted by the sponsors. Their attention was drawn to the possibility that the study might result in the conclusion that in view of the diversity of the particular cases of "historic waters, including historic bays" no general rules could be drawn up. The representative of India replied that no general rules could, of course, be drafted if it was clearly impossible to do so, and that it was precisely the object of the proposed study to determine whether such rules could be drafted.

18. In view of the various points brought up during the discussion, a decision on the draft resolution and on the Japanese amendment was further postponed.

19. The matter came before the First Committee again at its sixty-third meeting.[23] India and Panama now submitted a revised version of their draft resolution, reading as follows:[24]

"The First Committee,

"Considering that the International Law Commission has not provided for the régime of historic waters including historic bays,

"Recognizing the importance of the juridical status of such areas,

"Recommends that the Conference should refer the matter to the General Assembly of the United Nations with the request that the General Assembly should make appropriate arrangements for the study of the juridical régime of historic waters including historic bays, and for the result of these studies to be sent to all Member States of the United Nations."

In this wording, the draft resolution was adopted by the First Committee. The delegation of Japan withdrew its amendment to article 7.

20. It might be useful to point out that in the revised draft resolution which was adopted, the word "juridical" had been inserted before the word "régime" so as to clarify the character of the study to be undertaken. The points made in discussion referred to above had also been taken into consideration in the revised version.

21. The resolution adopted by the First Committee was submitted to the Conference in the Committee's report on its work.[25] The resolution was adopted without discussion, by the Conference, at its twentieth plenary meeting.[26] The clause in the article on bays stating that the provisions of the article did not apply to "historic bays" was adopted in the wording proposed by the International Law Commission and quoted above in paragraph 2 of this paper.

22. In consequence, the following resolution dated 27 April 1958 was transmitted to the General Assembly:

"The United Nations Conference on the Law of the Sea,

"Considering that the International Law Commission had not provided for the régime of historic waters, including historic bays,

"Recognizing the importance of the juridical status of such areas,

"Decides to request the General Assembly of the United Nations to arrange for the study of the juridical régime of historic waters, including historic bays, and for the communication of the results of such study to all States Members of the United Nations."

23. The General Assembly, at its 752nd plenary meeting on 22 September 1958, placed on the agenda of its thirteenth session the item "Question of initiating a study of the juridical régime of historic waters, including historic bays" and referred it to the Sixth Committee. After a short discussion, the Committee adopted and recommended to the General Assembly a draft resolution whereby the Assembly would postpone consideration of the question to its fourteenth session. This draft resolution was approved by the General Assembly at its 783rd plenary meeting, on 10 December 1958.[27]

24. At its fourteenth session, the General Assembly again referred the item to the Sixth Committee which discussed it at its 643rd to 646th meetings.[28] In the course of the debate some representatives discussed the substance of the question, but most of the speakers reserved their position on the substance and limited themselves to the problem of how the study of the question should be organized. In the end there was general agreement that the study of the question should be entrusted to the International Law Commission. The Sixth Committee unanimously adopted and submitted to the General Assembly a draft resolution to that effect, and at its 847th plenary meeting on 7 December 1959, the Assembly adopted the following resolution 1453 (XIV):

"The General Assembly,

"Recalling that, by a resolution adopted on 27 April 1958, the United Nations Conference on the Law of the Sea requested the General Assembly to arrange for the study of the juridical régime of historic waters, including historic bays, and for the communication of the results of the study to all States Members of the United Nations,

"Requests the International Law Commission, as soon as it considers it advisable, to undertake the study of the question of the juridical régime of historic waters, including historic bays, and to make such recommendations regarding the matter as the Commission deems appropriate."

25. General Assembly resolution 1453 (XIV) was included in the agenda of the twelfth session of the International Law Commission and discussed at its 544th meeting on 20 May 1960.[29] As might be expected, the discussion mainly dealt with the methods of the study to be undertaken.

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[23] Op. cit., pages 197-198.

[24] A/CONF.13/C.1/L.158/Rev.1, op. cit., page 252.

[25] *Official Records of the United Nations Conference on the Law of the Sea, Volume II, Plenary Meetings*, page 125.

[26] Op. cit., page 68.

[27] See *Official Records of the General Assembly, Thirteenth Session, Sixth Committee*, 597th and 598th meetings and annexes to agenda item 58.

[28] Op. cit., *Fourteenth Session, Sixth Committee*, 643rd to 646th meetings and annexes to agenda item 58.

[29] *Yearbook of the International Law Commission, 1960*, volume I, pages 111-116.

26. According to one school of thought which turned out to be the minority opinion, the Commission should invite the Member States to send to the Secretariat all available documentation concerning those historic waters, including historic bays, which were subject to their jurisdiction and to indicate the régime claimed by them for these waters. Only from such data provided by Governments could the Commission, according to this view, learn the rules of customary international law concerning historic waters. Although it was not the task of the Commission to decide on particular claims to these waters, nevertheless, it must discover what bays and other waters were claimed as historic and on what grounds, in order to be able to determine the principles governing the juridical régime of historic waters on the basis of existing international custom.

27. The majority of the members of the Commission, on the other hand, feared that if Governments were invited to specify their claims to historic waters they might be tempted, as a matter of prudence, to protect their position by advancing all their claims, including possibly some totally new ones. They might also thereby commit themselves to a rigid attitude which could make a solution of the problem more difficult in the future. Furthermore, possibly exaggerated claims would not be a suitable basis for the formulation of principles on the matter. Those members who held this opinion therefore felt that the Commission should first determine the principles governing the matter and then invite the Governments to comment on those principles. If the Governments so wished they could, of course, in their observations on the principles, refer to particular claims to historic waters.

28. While the majority of the members of the Commission were against requesting information from Governments at the present stage, they considered that in order to expedite the Commission's work in this field, some action should be undertaken forthwith. It was therefore decided to request the Secretariat to follow up the work begun by the preparation of the memorandum on "historic bays" mentioned above in paragraph 8. This decision was set out in paragraph 40 of the Commissions' report on its twelfth session (A/4425) as follows:

> "... The Commisson requested the Secretariat to undertake a study of the juridical régime of historic waters, including historic bays, and to extend the scope of the preliminary study outlined in paragraph 8 of the memorandum on historic bays prepared by the Secretariat in connexion with the first United Nations Conference on the Law of the Sea ..."

29. Paragraph 8 of the memorandum referred to in the quotation reads:

> "8. As indicated in part II of this paper, the theory of historic bays is of general scope. Historic rights are claimed not only in respect of bays, but also in respect of maritime areas which do not constitute bays, such as the waters of archipelagos and the water area lying between an archipelago and the neighbouring mainland; historic rights are also claimed in respect of straits, estuaries and other similar bodies of water. There is a growing tendency to describe these areas as 'historic waters', not as 'historic bays'. The present memorandum will leave out of account historic waters which are not also bays. It will, however, deal with certain maritime areas which, though not bays *stricto sensu*, are of particular interest in this context by reason of their special position or by reason of the discussion or decisions to which they have given rise."

30. It is apparent from what has been said above that the subject-matter of the study to be undertaken is wider in scope than the subject-matter of the memorandum on "historic bays" (A/CONF.13/1) prepared by the Secretariat with the purpose of shedding light on the clause exempting such bays from the provision of the article on bays contained in the International Law Commission's draft on the law of the sea. The subject-matter was widened to include also other "historic waters" than "historic bays". On the other hand, very little information can be gathered from the discussions related above as to the scope and meaning of the term "historic waters" or as to the relationship between that term and the term "historic bays". This was to be expected as the discussion was mainly concerned with methods and procedures for dealing with the matter. Moreover, as will be seen below, the question of the relationship between the terms "historic bays" and "historic waters" does not involve major problems.

31. Another point which clearly emerges from the foregoing is that the study at the present stage should not have as its purpose to attempt to establish a list of existing "historic bays" and other "historic waters". As far as "historic bays" are concerned, the previous Secretariat memorandum (A/CONF.13/1) contains a comprehensive enumeration of such bays and it would be difficult to make useful additions thereto without consulting the Governments.[30]

32. The purpose of the study should rather be to discuss the principles of international law governing the régime of "historic waters". The question then arises how these principles can be ascertained. The proper inductive method would be to study the particular cases of "historic waters" and see what common principles can be abstracted from them. This procedure would, however, seem to require that the first step should be to establish a collection of cases which would be as complete as possible. That would mean that the Governments must be approached with a request to provide information. On the other hand, if not every governmental claim to "historic waters" is to be accepted, some principles would be needed in the light of which the claims could be evaluated. Theoretically at least, there seems to be a dilemma here: in order to decide whether a claim to "historic waters" is rightful, it is necessary to have principles of international law by which the claims can be appraised, but in order not to be arbitrary these principles must be based on the actual practice of States in these matters. As usual the dilemma can be solved only in a pragmatic way. There is already available considerable material in the form of known claims to "historic waters", discussions of the subject in the literature of international law and previous attempts to establish and formulate the relevant principles. Most of the material has already been recorded in the Secretariat memorandum on "historic bays" (A/CONF.13/1). On this basis it is possible to analyse and discuss important aspects of the question and to arrive at certain tentative conclusions which can be further developed and where necessary modified in the light of information and observations received at a later stage from Governments. The present paper is conceived as a contribution to this initial or tentative discussion of the subject. Its purpose is to bring to

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[30] The question of establishing a list of historic waters is discussed more extensively below in paragraphs 168-176.

light, analyse and discuss problems connected with the subject rather than to present complete solutions to these problems. In order to be useful and to advance the study of the relevant problems, the paper must go beyond the mere enumeration of the various opinions expressed in theory and practice. Without presuming to give judgements on these opinions, it will sometimes be necessary to point out difficulties which seem to be inherent in some of them and to express a preference for others.

II. Juridical régime of historic waters, including historic bays

A. Preliminary explanation of the terms "historic waters" and "historic bays"

33. It is hardly necessary to go deeply into the matter of "historic waters" to realize that this is a subject where superficial agreement among authors and among practitioners conceals several controversial problems as well as some obscurity or at least lack of precision. Nobody would contest that there are cases in which a State has a valid historic title to certain waters adjacent to its coasts, but when it comes to a more precise definition of this title, its relation to the rules of international law for the delimitation of the maritime territory of a State or the question of the circumstances in which the historic title may arise, agreement is far from complete. Although it would have been convenient to be able to give, at the outset, a definition of "historic waters", this is therefore not possible. Without an examination and discussion of the controversial problems involved, the presentation of a definition would be premature. Furthermore, as was said above, the purpose of the present preparatory study is not so much to provide ready-made solutions to the relevant problems as to indicate these problems and so to prepare the way for the International Law Commission's consideration of the matter. In other words, in the paper an attempt will be made to set forth, analyse and clarify a number of problems connected with the concept or theory of "historic waters", departing from the fact that it is universally recognized in the doctrine and practice of international law that States may under certain circumstances on historic grounds have valid claims to certain waters adjacent to their coasts.

34. One of the lesser problems which, at least in a preliminary way, should be clarified is the terminological question arising from the use in theory and practice rather indiscriminately of the terms "historic bays" and "historic waters". These two terms are obviously not synonymous; the latter term has a wider scope, as is also apparent from the expression used in the resolutions of the Conference on the Law of the Sea and the General Assembly, namely, "historic waters, including historic bays". It is a fact that the term "historic bays" is more frequently used or has until recent times been more frequently used than "historic waters". This circumstance cannot, however, be taken as evidence that the more general view is that only bays, not other waters, may be claimed by States on an historic basis. On the contrary, it can be said that all those authorities who have directed their attention to the problem seem to agree that historic title can apply also to waters other than bays, i.e., to straits, archipelagos and generally to all those waters which can be included in the maritime domain of a State. If the term "historic bays" has been used more frequently than "historic waters", this is mainly due to the fact that claims on an historic basis have been made more often with respect to what were called or considered to be bays than to other waters. In principle, as was said in the Secretariat memorandum (A/CONF.13/1), referred to above in paragraph 29, "the theory of historic bays is of general scope", i.e., it applies also to other maritime areas than bays. Sir Gerald Fitzmaurice no doubt expressed a generally held opinion when he stated that:

> "... there seems to be no ground of principle for confining the concept of historic waters merely to the waters of a bay... Even if the cases would in practice be fewer, a claim could equally be made on an historic basis to other waters..."[31]

It may be of interest to note that in the *Fisheries* case between the United Kingdom and Norway, both parties agreed that the theory of "historic waters" was not limited to bays.[32] It will be seen below that the legal status of "historic bays" may be different from that of other "historic waters", but that circumstance obviously does not weaken the position that an historic title can exist to other waters than bays.

35. It is easily discernible that many of the problems and difficulties inherent in the theory of "historic waters" have their origin or are conditioned by the circumstances in which the theory arose and was developed. A short description of the background of the theory, in fact and in law, should therefore facilitate its understanding.

B. Concept of "historic waters"

1. *Background*

36. There are above all two factors which have contributed to the emergence and development of the concept of "historic waters". One important factor was the controversial status of the international legal rules relating to the delimitation of the maritime territory of the State. Without taking a position regarding the question whether or not there ever was a generally accepted maximum width of the territorial sea or a maximum breadth of the opening of bays, it can safely be said that these questions through the ages were enveloped in controversy and therefore appeared to both lawyers and laymen as subject to doubt. In these circumstances it was natural that States laid claim to and exercised jurisdiction over such areas of the sea adjacent to their coasts as they considered to be vital to their security or to their economy. When a controversy arose after a State had for some time exercised jurisdiction over such an area of the sea, and the opponent State alleged that, according to the general rules of international law relating to the delimitation of territorial waters, the area in question was outside such waters, it was also natural for the defendant State to reply not only that it had a different opinion about the content of the applicable rule of general international law but also that by force of long usage it now had an historic title to the area. In the course of time there occurred quite a number of cases in which a State

[31] *British Year Book of International Law*, vol. 31 (1954), page 381; see also Gidel, *Droit international public de la mer*, vol. III (1934), page 651, and the Norwegian Counter-Memorial in the *Fisheries* case, paragraphs 539, 549 and 557-560; *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, volume I, pages 548, 557 and 564-566, and British reply, paragraphs 471-472, *op. cit.*, vol. II, pages 643-645; Cf. also the report of the Second Committee in *Acts of the Conference for the Codification of International Law (1930)*, vol. III, page 211.

[32] Cf. *op. cit.*, vol. II, page 643.

asserted its sovereignty, based on historic rights, over certain maritime areas, whether or not according to general international law rules such areas might be outside its maritime domain. No attempt will be made in this paper to enumerate these cases; an enumeration and description of many of them may be found in the Secretariat's memorandum on "historic bays" (A/CONF.13/1), pages 3 *et seq.*

37. The second important factor in the development of the concept and theory of "historic waters" was the attempts, official and unofficial, to substitute for the controversial and doubtful international law relating to the delimitation of territorial waters a set of clear-cut, generally acceptable, written rules on the subject. For various such projects, reference may also be made to the aforementioned Secretariat memorandum (A/CONF.13/1), pages 14 *et seq.* As pointed out in that memorandum (pages 2-3), a codification of the international law rules relating to the delimitation of territorial waters and in particular regarding the delimitation of bays would in several cases have conflicted with existing situations. In other words, considerable maritime areas over which States claimed and exercised sovereignty would, if the codification were accepted, fall outside the jurisdiction of these States and belong instead to the high seas. It is obvious that a codification having such consequences would not commend itself to the States affected. The proposed rules would stand a better chance of being accepted if they included a clause excepting from its regulations waters to which a State had a historic title. As a consequence, the proposed codifications dealing with the delimitation of territorial waters generally contained such clauses in varying formulations. The concept of "historic waters" came to be considered as an indispensable concept without which the task of establishing simple and general rules for the delimitation of maritime areas could not be carried out. Gidel expresses this thought when he says:

> "The theory of 'historic waters', whatever name it is given, is a necessary theory; in the delimitation of maritime areas, it acts as a sort of safety valve; its rejection would mean the end of all possibility of devising general rules concerning this branch of public international law . . .".[33]

38. In summary, the concept of "historic waters" has its root in the historic fact that States through the ages claimed and maintained sovereignty over maritime areas which they considered vital to them without paying much attention to divergent and changing opinions about what general international law might prescribe with respect to the delimitation of the territorial sea. This fact had to be taken into consideration when attempts were made to codify the rules of international law in this field, i.e., to reduce the sometimes obscure and contested rules of customary law to clear and generally acceptable written rules. It was felt that States could not be expected to accept rules which would deprive them of considerable maritime areas over which they had hitherto had sovereignty. The Second Committee of the 1930 Hague Codification Conference said in its report:

> "One difficulty which the Committee encountered in the course of its examination of several points of its agenda was that the establishment of general rules with regard to the belt of the territorial sea would, in theory at any rate, effect an inevitable change in the existing status of certain areas of water. In this connection, it is almost unnecessary to mention the bays known as 'historic bays'; and the problem is besides by no means confined to bays, but arises in the case of other areas of water also. The work of codification could not affect any rights which States may possess over certain parts of their coastal sea, and nothing, therefore, either in this report or in its appendices, can be open to that interpretation."[34]

39. The circumstance that the existence of historic rights to certain areas of the sea came to be of particular interest in connexion with the endeavour to formulate general rules of international law on the delimitation of the territorial sea had as a consequence a tendency to consider the juridical régime of "historic waters" as an exceptional régime. The protagonists of the codification of international law in this field understood that, as a practical matter, a long-standing exercise of sovereignty over an area of the sea could not suddenly be invalidated because it would not be in conformity with the general rules being formulated. On the other hand, as the purpose of the codification was the establishment of general rules it was natural to look upon these historic cases as exceptions from the rule. Gidel succinctly expressed this view as follows:

> ". . . while the theory of historic waters is a necessary theory, it is an exceptional theory . . .".[35]

40. Whether or not the régime of "historic waters" is an exceptional régime may seem to be an academic question. In reality, it is of practical importance with respect to the question of what is needed to establish title to such waters. If the right to "historic waters" is an exceptional title which cannot be based on the general rules of international law or which may even be said to abrogate these rules in a particular case, it is obvious that the requirements with respect to proof of such title will be rigorous. In these circumstances the basis of the title will have to be exceptionally strong. The reasons for accepting the title must be persuasive; for how could one otherwise justify the disregarding of the general rule in the particular case? To quote Gidel again:

> "The costal State which makes the claim of 'historic waters' is asking that they should be given exceptional treatment; such exceptional treatment must be justified by exceptional conditions."[36]

41. Both from the theoretical and from the practical point of view, it is therefore important to examine, analyse and clarify the notion that the régime of "historic waters" is an exceptional régime.

2. *Is the régime of "historic waters" an exceptional régime?*

42. It is probably true that, at least among the writers on the subject, the dominant opinion is that "historic waters" constitute an exception to the general rules of international law governing the delimitation of the maritime domain of a State. Gidel has been quoted above as an adherent of that opinion. His thoughts on the matter are expressed in greater detail in the following passage:

[33] Gidel, *op. cit.*, page 651.

[34] *Acts of the Conference for the Codification of International Law, Meetings of the Committee*, volume III: Minutes of the Second Committee (Series of League of Nations publications, V.Legal.1930.V.16), page 211.

[35] Gidel, *op. cit.*, page 651.

[36] Gidel, *op. cit.*, page 655.

"An examination of the facts shows: (1) that certain States have claimed as part of their maritime domain waters which under the generally accepted rules applicable in principle to such areas would have had to be considered as part of the high seas, and (2) that such claims have often been recognized by other States.

"This state of affairs has given rise to a theory commonly referred to as the theory of 'historic bays': it has tried, with varying success, to identify a possible link between these different exceptional situations, whose only common feature appears to be their derogation from the generally accepted rules. Since it is necessary, if the general rule is not to be destroyed, to limit the claims of States tempted to nullify the generally recognized rules for determining areas that have a juridical status other than that of the high seas, the 'historic bays' theory has aimed at making such derogations subject to certain conditions, on which agreement, both in the doctrine and in practice, appears not to be complete."[37]

In this statement the exceptional character of "historic waters" is strongly emphasized as well as the necessity of limiting claims of this nature in order not to jeopardize the general rules regarding the delimitation of the maritime domain of States. It is also interesting to note that Gidel mentions two facts as bases of the concept of historic waters: a claim by a State to a maritime area which according to the general rules would be high seas, and the recognition by the other States of this exceptional claim. This indicates the connexion, according to this view, between the exceptional nature of the claim and a requirement that in order to be the basis of a valid title, the claim has to be combined with some form of recognition by the other States. We shall come back to this important proposition later. Here it is sufficient to point out the connexion as it appears in Gidel's statement.

43. A similar position is taken by another prominent authority on these matters. In an article discussing the law and procedure of the International Court of Justice, Sir Gerald Fitzmaurice says with reference to the *Fisheries* case between the United Kingdom and Norway:

"The Norwegian contention was essentially an attempt to remove from the conception of 'historicity' of given rights, the element of *prescription*, that is, in effect, the element of an *adverse* acquisition of rights in the face of existing law. Yet this element is of the essence of the matter, for a title or right based on historic considerations only becomes material when (and indeed assumes that) the actions involved are not or could not be justified according to the recognized rules, and can therefore be justified, if at all, only by reference to some special factor such as an historic [illegible]t.

"As was [illegible]ested in the United Kingdom's written reply in [illegible] *Fisheries* case, this right takes the form essentially of a 'validation in the international legal order of a usage which is intrinsically invalid, by the continuance of the usage over a long period of time'."[38]

Sir Gerald is here referring to the subsidiary issue in the *Fisheries* case whether Norway, even if the general rules of international law did not allow it to do so, had an historic right to delimit its waters in the manner provided by the Norwegian legislation and opposed by the United Kingdom. In his view, such an historic right would be an adverse acquisition of certain maritime areas, an acquisition on the basis of a title which in the particular case would constitute an exception to or an abrogation of the general rule. A similar thought is expressed in the following passage from another article of his on the law and procedure of the Court:

"It has for long been part of international law that, on a basis of long-continued use and treatment as part of the coastal domain, waters which would not otherwise have that character may be claimed as territorial or as internal waters . . .".[39]

44. In the opinion of Sir Gerald, the exceptional nature of the historic title also has as a consequence that some form of acquiescence on the part of other States is necessary.[40] Further attention to this aspect of the problem will be given below.

45. Other authors who consider the régime of "historic waters" to be an exception to the general rules are, e.g., Westlake, Fauchille, Pitt-Cobbett, Higgins and Colombos, Balladore Pallieri and others. Pertinent quotations from their works are found in the Secretariat memorandum on "historic bays" (A/CONF.13/1), pages 18-20.

46. The view that "historic waters" constitute an exception to the generally valid rules regarding the delimitation of maritime areas was argued by the United Kingdom in the *Fisheries* case. A summary of its position is set out in the reply of the United Kingdom as follows:

"(i) A State is entitled to a belt of territorial waters of a certain breadth—the generally accepted limit is three miles—but Norway has an historic or prescriptive title to a belt of four miles.

"(ii) The belt of territorial waters must be measured from a base-line, which, subject to certain exceptions, must follow the low-water mark on the land.

"(iii) Where there are bays or similar indentations of the coast (whatever name these indentations have) which are of a certain character and where there are islands off the coast, there are rules of general international law which permit the base-line of territorial waters to cease to follow low-water mark on the land and to enclose as national waters certain areas of sea.

"(iv) A State can only establish a title to areas of sea which do not come within these general rules of international law on the basis of an historic or prescriptive title."[41]

47. In the opinion of the United Kingdom there were two essential elements in such an historic or prescriptive title, namely:

"(i) Actual exercise of authority by the claimant State;

"(ii) Acquiescence by other States."[42]

48. The connexion between the exceptional character of the claim to an historic title and the requirement of acquiescence by other States is clear from the following statement by the United Kingdom:

[37] Gidel, op. cit., pp. 621-623.

[38] *British Year Book of International Law*, vol. 30 (1953), pages 27-28.

[39] Op. cit., vol. 31 (1954), page 381.

[40] See op. cit., vol. 30 (1953), pages 27 *et seq.*

[41] *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, vol. II, page 302.

[42] Op. cit., page 303.

". . . where the claim goes beyond what is accepted under general customary international law, it is the acquiescence of other States, express or implied from long usage, that sets the seal of legal validity upon the exceptional claim".[43]

49. In contrast to this theory according to which the régime of "historic waters" is an exceptional régime, there is another opinion which denies that there exist general rules of international law regarding the delimitation of bays and other maritime areas from which the régime of "historic waters" could be an exception. In a study on "historic bays"[44] Bourquin has developed this line of thought. He says that:

". . . Before taking a position on the theory of 'historic bays', one must ask oneself whether ordinary law subjects the delimitation of territorial bays to strict rules. The answer to this question cannot fail to influence the way in which one regards the practical importance and juridical function of historic titles.

"Is there a rule, valid for all States, which would limit the width of the opening of territorial bays to a given distance? More precisely, has the so-called ten-mile rule, generally advanced by those who favour a rigid delimitation, been consecrated by customary law?"[45]

50. After having reached the conclusion that no such fixed limitation of the opening of a bay exists in general international law and that in any case:

"The character of a bay depends on a combination of geographical, political, economic, historical and other circumstances . . ."[46]

he continues:

"If it is agreed that the solution given by ordinary law to the problem of the territoriality of bays is not a matter of a mathematical limitation of their width but depends on an appreciation of the various elements that make up the character of the particular bay, the notion of 'historic titles' assumes a meaning that is quite different from that given it by those who favour the ten-mile rule. 'Historic title' no longer has the function of making an otherwise illegal situation legitimate. It is no longer a means whereby the coastal State can include a part of the high seas in its domain. It is no longer connected with the idea of usucapion. It is one element along with others characterizing a particular state of affairs, which must be considered as a whole and in its various aspects.

"Where long usage is invoked by a State, it is a ground additional to the other grounds on which its claim is based. In justification of its claim, it will be able to point not only to the configuration of the bay, to the bay's economic importance to it, to its need to control the bay in order to protect its territory, etc., but also to the fact that its acts with respect to the bay have always been those of the sovereign and that its rights are thus confirmed by historical tradition."[47]

51. As he does not consider the régime of historic bays as a deviation from general rules of international law, Bourquin is inclined to de-emphasize the importance of the acquiescence of other States. The historic title is for him "a juridical consolidation by the effect of time",[48] and such title is created by "the peaceful and continuous exercise of sovereignty".[49] Therefore,

"While it is wrong to say that the acquiescence of these States [foreign States] is required, it is true that if their reactions interfere with the peaceful and continuous exercise of sovereignty, no historic title can be formed."[50]

As said before, this question will be further analysed later on; the purpose of mentioning it here is to point out the connexion between the author's concept of "historic bays" and his attitude regarding the requirement of acquiescence on the part of foreign States.

52. In the *Fisheries* case, Norway took a similar position. The argument was, however, not limited to "historic bays" but referred to "historic waters" in general:

"In sum, it is not at all the function of an historic title, as conceived by the Norwegian Government and invoked in the present case, to legalize an otherwise illegal situation, but rather to confirm the validity of a situation.

"The Norwegian Government does not believe it necessary to discuss to what extent parts of the high seas may be included in the maritime domain of the State by virtue of an historic title, since the question does not arise in this case. It would only arise if the general rules which the United Kingdom Government alleges to be applicable to the delimitation of the maritime domain were really in force. But, the Norwegian Government has demonstrated that they are not and that they have never acquired the stability of customary rules . . .

"The Norwegian Government recognizes that the usage on which an historic title is based must be peaceful and continuous, and consequently that the reaction of foreign States constitutes an element to be taken into account in an appreciation of such title; but it completely rejects the thesis of the adverse Party that the aquiescence of other States is the only basis of an historic title, which would then be virtually indistinguishable from the juridical institution of recognition.

"The Norwegian Government considers that the absence of reaction by other States endows usage with the peaceful and continuous character it must have in order to give rise to an historic title.

"As to the consequences that must be deemed to ensue in this connexion from opposition by certain States, the Norwegian Government believes that it is a specific question, that each case must be judged in the light of its circumstances; that not all protests can be placed on the same footing; that, in any case, isolated opposition is incapable of preventing the creation of an historic title; and that in decisions in such matters one should bear in mind the wise counsel of the maxim *quieta non movere*."[51]

53. Also Counsel for Norway said, as quoted by the Court in its judgement:

"The Norwegian Government does not rely upon history to justify exceptional rights, to claim areas of

[43] Op. cit., page 621.

[44] Bourquin, "Les baies historiques" in *Mélanges Georges Sauser-Hall* (1952), pages 37-51.

[45] Op. cit., page 39.

[46] Op. cit., page 42.

[47] Op. cit., pages 42-43.

[48] Op. cit., page 45.

[49] Op. cit., page 46.

[50] *Ibid.*

[51] *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, vol. III, pages 461-462.

sea which the general law would deny; it invokes history, together with other factors, to justify the way in which it applies the general law."[52]

54. Without passing judgement on these two opposing opinions, it may be pointed out that there seem to be certain difficulties inherent in the view that title to "historic waters" is an exception to the general rules of international law regarding the delimitation of the maritime domain of the State and that such title therefore must be based on some form of acquiescence on the part of the other States. If such general rules exist, and whatever their contents may be, they must obviously be customary rules. When the Geneva Convention on the Territorial Sea and the Contiguous Zone comes into force and is widely ratified, this situation will change to a certain extent.[53] For the present, however, the general rules in this field from which the régime of "historic waters" would be an exception could only be customary rules. This means that both the general rules and the title to "historic waters" would be based on usage. Why then should the latter be considered as exceptional and also inferior with regard to its validity, so that the acquiescence of the other States would be necessary to validate the title? The facts on which the title to "historic waters" are based belong to the usage in this field, no less than the facts on which the general customary rules would be based. And the *opinio juris* exists in the case of "historic waters" just as much as in the case of the so-called general rules.

55. If there are general rules in this field, the most that could be asserted is that, within the framework of customary international law, certain maximum limits for the territorial sea and the width of the opening of bays are generally applicable and that in certain cases there exists an historic title to waters which do not come within these limits. The so-called general rules would then be "general" in the sense only that they would be more generally applicable than the "exceptional" title to "historic waters". But they would not be "general" in the sense of having a superior validity in relation to the "exceptional" historic title. Both the general rules and the historic title would be part of customary international law, and there would be no grounds for claiming *a priori* that the historic title is valid only if based on the acquiescence of the other States.

56. However, it might be doubted whether it is even possible in this manner to distinguish within the framework of customary international law between a "general" régime and an "exceptional" régime based on an historic title. It may well be argued that a distinction between "general" and "exceptional" in this case would be wholly arbitrary. It could be said that only by *a priori* classifying certain cases as exceptional, or by *a priori* classifying certain cases as normal, can one arrive at general customary rules regarding such questions as the limits of the territorial sea, bays, etc.

57. Furthermore, it may even be doubted whether there exist at present any general customary rules regarding the delimitation of the maritime domain of States. The fact is that through the ages many conflicting opinions have been expressed in the doctrine and in practice on these problems and that claims to maritime areas have been made by States on grounds which have varied greatly both within the same period of time and from one time to another. International doctrine and practice therefore present a rather confusing picture in this respect. It is to be expected that the Geneva Conventions will, when they come into force, bring more stability to this field, but as far as the customary law is concerned the situation is far from clear.

58. If that is true, the view that the régime of "historic waters" is an exceptional régime which deviates from certain precise general rules of customary international law becomes even more doubtful. If the rules of customary international law on fundamental questions such as the breadth of the territorial sea or the width of the opening of bays are in dispute between the States, where are the general rules from which the historic title would be an exception? In these circumstances, would not the most realistic view be not to relate the claim or right to "historic waters" to any general customary rules on the delimitation of maritime areas, as an exception or not an exception from such rules, but to consider the title to "historic waters" independently, on its own merits.[54]

59. It follows that also the problem of the elements constituting title to "historic waters" and the question of proof have to be considered independently and not on the assumption that the title to "historic waters" constitutes an exception to general international law. In particular, the question if, or to what extent, a claim by a State to "historic waters" is subject to the acquiescence of other States has to be studied without being prejudiced by the *a priori* postulate that this is an exceptional claim.

60. Some authors who consider that the régime of "historic waters" is an exception to the general rules of international law regarding the delimitation of bays and other maritime areas use the existence of "historic bays" as conclusive proof of the existence of such general rules. Gidel says:

> "The simple existence of this category of 'historic bays', which is not questioned by anyone, is of itself enough to demonstrate conclusively the existence of customary international law in the matter."[55]

This argument seems based on a *petitio principii*, for only of it is already assumed that the régime of "historic bays" is an exception to certain general rules does the existence of "historic bays" imply the existence of such general rules. Sir Gerald Fitzmaurice places the argument on a more practical level:

> ". . . it must be assumed that the historic principle remains—and if this is admitted, it follows at once that international law, even if it does not impose a ten-mile limit [for bays], must still impose *some* limit, for if there were no legal limitation on the size of bays all reason for claiming a bay on historic grounds would disappear."[56]

There would, however, be a practical reason for claiming an historic title to bays or other maritime areas even if there is no generally accepted legal limitation on the size of bays or the breadth of the territorial sea. It is sufficient that the claiming State itself or other States

[52] *I.C.J. Reports, 1951*, page 133.

[53] See below, paragraphs 72-79.

[54] Cf. Jessup, *The Law of Territorial Waters and Maritime Jurisdiction* (1927), pages 355 *et seq.*

[55] Gidel, op. cit., page 537. See also the reply of the United Kingdom in the *Fisheries* case, *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, vol. II, page 607.

[56] *British Year Book of International Law, 1954*, page 416.

hold that there is such a limitation to make it understandable that a State may wish to base its claim on historic grounds. Only if there existed general and absolute agreement among the States that there was no limitation, would it be pointless to claim a maritime area on historic grounds. It could even be asserted that it is the *uncertainty* of the legal situation, not the certainty that general rules of international law on the matter exist, which has given rise to the claims which form the factual basis of the theory of "historic waters".

61. Intimately connected with the view that the régime of "historic waters" forms an exception to general international law is the idea that the title to "historic waters" is a kind of prescriptive right. This thought is clearly expressed in some of the statements quoted above. It may therefore be of interest briefly to examine that idea.

3. *Is the title to "historic waters" a prescriptive right?*

62. There has been much debate regarding the existence of prescription in international law.[57] Of the two main forms of prescription, "extinctive prescription" (*prescription libératoire*), or loss of a claim by failure to prosecute it within a reasonable time, has no application in the present context. In connexion with "historic waters" it is the other form of prescription, namely "acquisitive prescription" (*prescription acquisitive*), which may be of interest.

63. "Acquisitive prescription" means that a title to something, e.g., a territory, is acquired by prescription, i.e., by the lapse of time under certain circumstances. Within the category of "acquisitive prescription" two sub-categories can be distinguished. One is acquisitive prescription based on "immemorial possession". In this case the original title is uncertain. It may have been a valid title or not; in any case the long lapse of time makes it impossible to establish what the original legal situation was. This uncertainty is cured and a valid title is considered to be acquired by "immemorial possession". The existence in international law of this kind of "acquisitive prescription" does not seem to be disputed. More controversial is the question whether the other sub-category of "acquisitive prescription" has a place in international law. In this case, which is said to be akin to the *usucapio* of Roman law, the original title of the possessor is known to be defective. But because the possessor has enjoyed uninterrupted possession for a period of time under conditions which are considered to imply acquiescence (in any case tacit consent) on the part of the rightful title owner, the possessor is held to have acquired through prescription a full and complete title. Some authors have denied that this sort of acquisitive prescription exists in international law, because no fixed time for the necessary possession can be found there, in contrast to the situation in municipal law where precise time-limits are prescribed. The majority of writers, however, consider this to be a detail which should not prevent the acceptance in international law of this kind of prescription which they find necessary for the preservation of international order and stability. Some even think that no distinction should be made between the two sub-categories of "acquisitive prescription", because the "immemorial possession" cannot in practice be required to be literally "immemorial" and that therefore, as far as the lapse of time is concerned, the two sub-categories tend to merge.[58]

64. This argument for the assimilation of the two sub-categories is, however, hardly sufficient. There is another important difference between them, namely, a difference with respect to the original title. In one case the original title is uncertain, in the other case it is known to be defective. It would seem that the requirements for remedying uncertainty should be less stringent than those necessary to cure known illegality.

65. To what extent can the concept of prescription be applied to "historic waters"? This problem has to be approached with some circumspection, for although there seems to be no reason why prescription should not apply to maritime areas as well as to areas of land, that does not necessarily mean that acquisitive prescription in both its forms is applicable to "historic waters". If, for instance, there is a dispute between two States regarding the sovereignty over a certain area of water, it is thinkable that one of the parties to the dispute might base its case on a prescriptive right to the area. But that would hardly be a case of "historic waters". The theory of "historic waters" is not used to decide whether a maritime area belongs to one State or another. "Historic waters" are not waters which originally belonged to one State but now are claimed by another State on the basis of long possession. They are waters which one State claims to be part of its maritime territory while one or more other States may contend that they are part of the high seas. To what extent then is prescription applicable to this latter situation?

66. As far as the first form of acquisitive prescription is concerned, i.e., prescription based on "immemorial possession", this kind of prescriptive right does not seem to differ much from the historic title envisaged in the theory of "historic waters". It refers to a situation where the original title is uncertain and is validated by long possession. It is approximately the same situation as in the case of "historic waters". If nothing more is implied in the term "prescriptive right", its application to "historic waters" seems innocuous, although not particularly useful.

67. If, on the other hand, the term "prescriptive right" refers to the second sub-category of acquisitive prescription, mentioned above, it is more difficult to accept the concept of prescription as applicable to "historic waters". In this case, prescription would mean that an originally *defective* or *invalid* title is cured by long possession. If applied to "historic waters" that would imply the assumption that according to the general rules of international law the waters were originally high seas, but that through the effect of time (in the proper circumstances) an exceptional historic title to the waters had emerged in favour of the coastal State. In other words, to consider the title to "historic waters" as a prescriptive right in this latter sense would really be to embrace the idea that the title to "historic waters" is an exception to the general rules of international law regarding the delimitation of maritime areas.

68. It is to be feared that this is usually what is implied when the term "prescriptive right" is used in connexion with "historic waters". In order to avoid that by the use of that term unwarranted assumptions are

[57] See, for instance, Oppenheim, *International Law*, vol. I, 8th ed. (1955), pages 575-578; Verykios, *La prescription en droit international public* (1934); Soresen in *Acta Scandinavica Juris Gentium*, vol. 3 (1932), pages 145-170; Johnson in *British Year Book of International Law*, vol. 27 (1950), pages 332-354; Pinto "La prescription en droit international", in *Recueil des Cours de l'Académie de Droit International*, vol. 87 (1955-I), pages 391-449.

[58] Cf. Johnson, op. cit., pages 339-340.

brought into the argument, it would therefore be preferable not to refer to the concept of prescription in connexion with the régime of "historic waters".[58]

4. Relation of "historic waters" to "occupation"

69. Another term which is occasionally used in connexion with "historic waters" is "occupation", and it may therefore be useful briefly to examine whether there is a significant relation between these two concepts.

70. As is well known, occupation is an original mode of acquisition of territory. It is defined by Oppenheim as follows:

> "Occupation is the act of appropriation by a State by which it intentionally acquires sovereignty over such territory as is at the time not under the sovereignty of another State."[59]

A similar definition is given by Fauchille:

> "Generally speaking, occupation is the taking by a State, with the intention of acting as the owner, of something which does not belong to any other State but which is susceptible of sovereignty."[60]

Both authors agree that because of the freedom of the high seas, those seas cannot be the object of occupation.[61]

71. This doctrine that occupation is an original mode of acquisition of territory but one which is not applicable to the high seas seems to be generally accepted at the present time. A State could therefore hardly claim an area of water on the basis of occupation unless it affirmed that the occupation took place before the freedom of the high seas became part of international law. In that case the State would claim acquisition of the area by an occupation which took place long ago. Strictly speaking, the State would, however, not assert an historic title but rather an ancient title based on occupation as an original mode of acquisition of territory. The difference may be subtle but should in the interest of clarity not be overlooked: to base the title on occupation is to base it on a clear original title which is fortified by long usage.

5. "Historic waters" as an exception to rules laid down in a general convention

72. The difficulties inherent in the conception that the régime of "historic waters" is an exception to customary law have been discussed above. What is the situation when the customary rules of international law regarding the delimitation of the maritime domain of the State are codified? Does the régime of "historic waters" then become an exceptional régime in the sense that strict requirements regarding the establishment of an area as "historic waters" are justified? To give an answer, it is necessary to study the content of the codified rules, the circumstances in which the rules were adopted and the intention of the parties accepting them.

73. As the nearest approach to a codification of the rules of international law regarding the territorial sea, the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone is of particular interest. As mentioned above, references to historic title occur in articles 7 and 12 of that Convention. Article 7, which deals with bays the coasts of which belong to a single State, contains a final paragraph stating that the foregoing provisions of the article shall not apply to so-called "historic bays". In paragraph 1 of article 12, regarding the delimitation of the territorial seas of States whose coasts are opposite or adjacent, there is a clause saying that the provisions of the paragraph shall not apply where by reason of historic title it is necessary to delimit the territorial seas in a different manner.

74. It seems to be clear both from the texts and from the relevant discussions at the Conference, related above in the first section of this paper, that the purpose of these exception clauses in articles 7 and 12 was to maintain with respect to the historic titles mentioned the *status quo ante* the entry into force of the Convention. As was indicated previously in this paper, the Second Committee of the 1930 Hague Codification Conference took the position in its report that the proposed codification of the rules of international law regarding territorial waters should not affect the historic rights which States might posseas over certain parts of their coastal sea. Articles 7 and 12 show that the 1958 Geneva Conference on the Law of the Sea took the same position regarding historic rights in relation to bays bordered by a single State or the delimitation of the territorial seas of States whose coasts are opposite or adjacent to each other.

75. The question arises, however, what the situation is in cases where the historic title has not been expressly reserved in the Convention. In principle, it seems that the answer must be: if the provisions of an article should be found to conflict with an historic title to a maritime area, and no clause is included in the article safeguarding the historic title, the provisions of the article must prevail as between the parties to the Convention. This seems to follow *a contrario* from the fact that articles 7 and 12 have express clauses reserving historic rights; articles without such a clause must be considered not to admit an exception in favour of such rights.

76. Obviously the situation is different where a certain subject-matter has not been regulated by the Convention. Such is the case with respect to bays, the coasts of which belong to two or more States, and also in regard to the breadth of the territorial sea. Here the subject-matter is left completely untouched by the Convention; and as the Convention contains no relevant general rules, it would of course be pointless to reserve historic rights in this respect.[62]

77. Three hypotheses may therefore be envisaged:

(i) The historic title relates to maritime areas not dealt with by the Convention and the Convention has consequently no impact on the title;

(ii) The historic title relates to areas dealt with by the Convention but is expresaly reserved by the Convention. Also in this case the Convention has no impact on the title;

(iii) The historic title is in conflict with a provision of the Convention and is not expressly reserved by the Convention. In that case, the historic title is superseded as between the parties to the Convention.

78. One can, of course, say in a certain sense that an historic title which is expressly reserved, as is the case in articles 7 and 12 of the Convention, thereby is implicitly qualified as an exception. But it must not be forgotten that the whole purpose of making the historic title an exception from the general rules contained in the main provisions of the relevant article is to *maintain* the historic title. It is not the intention, by excepting it, to subject the historic title to stricter requirements but to maintain the *status quo ante* with respect to the title. It would therefore be a fallacy if, from the fact that the Convention in certain cases excepts historic rights, one would draw the conclusion that the Convention requires stricter proof of the historic title than was the case before the conclusion of the Convention. In reality, the Convention simply leaves the matter, both regarding the existence of the title and the proof of the title, in the state in which it was at the entry into force of the Convention.

79. The above discussion of the general aspects of the concept of "historic waters", its relation to general international law and to certain other concepts such as prescription and occupation, has cleared the way for a more concrete study of the juridical régime of "historic waters". The first problem to be taken up is the question, what conditions must be fulfilled in order that an historic title to water areas may arise or, in other words, the question of the elements constituting a title to "historic waters".

C. Elements of title to "historic waters"

80. There seems to be fairly general agreement that at least three factors have to be taken into consideration in determining whether a State has acquired a historic title to a maritime area. These factors are: (1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign States. First, the State must exercise authority over the area in question in order to acquire a historic title to it. Secondly, such exercise of authority must have continued for a considerable time; indeed it must have developed into a usage. More controversial is the third factor, the position which the foreign States may have taken towards this exercise of authority. Some writers assert that the acquiescence of other States is required for the emergence of an historic title; others think that absence of opposition by these States is sufficient.

81. Besides the three factors just referred to a fourth is sometimes mentioned. It has been suggested that attention should also be given to the question whether the claim can be justified on the basis of economic necessity, national security, vital interest or a similar ground. According to one view, such grounds should even be considered to form the fundamental basis for a right to "historic waters", so that they would be sufficient to sustain the right even if the historic element were lacking.

82. These various factors will be examined below. In order not to complicate the discussion unnecessarily, it is assumed that there is only one coastal State claiming historic title to the area. In a separate sub-section, the situation will thereafter be studied which arises when "historic waters" are bordered by two or more States.

83. The method to be used will be an analysis of problems and principles rather than a discussion of cases. For a more detailed presentation of both case law and opinions of writers reference may be made to the Secretariat memorandum on "historic bays" (A/CONF.13/1).

1. Exercise of authority over the area claimed

84. Various expressions are used in theory and practice to indicate the authority which a State must continuously exercise over a maritime area in order to be able validly to claim the area on the basis of an historic title. As examples may be mentioned: "exclusive authority", "jurisdiction", "dominion", "sovereign ownership", "sovereignty".[63] The abundance of terminology does not, however, mean that there is a great and confusing divergence of opinion regarding the requirements which this exercise of authority would have to fulfil. On the contrary there seems to be rather general agreement as to the three main questions involved, namely, the scope of the authority, the acts by which it can be exercised and its effectiveness.

(a) *Scope of the authority exercised*

85. There can hardly be any doubt that the authority which a State must continuously exercise over a maritime area in order to be able to claim it validly as "historic waters" is sovereignty. An authority more limited in scope than sovereignty would not be sufficient to form a basis for a title to such waters. This view, which does not seem to be seriously disputed, is based on the assumption that a claim to an area as "historic waters" means a claim to the area as part of the maritime domain of the State. It is logical that the scope of the authority required to form a basis for a claim to "historic waters" will depend on the scope of the claim itself. If, therefore, as is the generally accepted view,[64] a claim to "historic waters" means a claim to a maritime area as part of the national domain, i.e., if the claim to "historic waters" is a claim to sovereignty over the area, then the authority exercised, which is a basis for the claim, must also be sovereignty.

86. This interrelationship between the scope of the claim and the scope of the authority which the claiming State must exercise, and also the soundness of the assumption that the claim to "historic waters" is a claim to sovereignty over the waters, may be illustrated by an example. Suppose that a State asserted, on a historical basis, a limited right related to a certain maritime area, such as the right for its citizens to fish in the area. This would not in itself be a claim to the area as "historic waters". Nor could the State, even if it so wanted, claim the area as its "historic waters" on the basis of the fact that its citizens had fished there for a long time. The claim would in such case not be commensurate with the factual activity of the State or its citizens in the area. Suppose on the other hand that the State has continuously

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[58] Oppenheim, *International Law*, volume I, 8th ed. (1955), page 555.

[59] Fauchille, *Traité de droit international public*, vol. I, part 2, 8th ed. (1925), pages 680-681.

[60] Oppenheim, op. cit., page 556; Fauchille, op. cit., page 702.

[61] It may be interesting to note that while various proposals for regulating the breadth of the territorial sea were submitted at the two Geneva Conferences on the Law of the Sea, none of these proposals contained clauses reserving historic titles to certain areas of the sea. It was also fairly apparent from the discussion that the aim of the proposals was to arrive at rules which would have universal application. If any of the proposed regulations of the breadth of the territorial sea had been accepted, such regulation would then have prevailed over conflicting historic titles to maritime areas. In view of the fact that none of the proposals acquired the necessary majority, it might perhaps be worth while, if and when the question of the breadth of the territorial sea is again taken up for solution, to consider whether an agreement on a proposal might be facilitated if it contained a clause reserving historic rights.

[62] For other examples see pages 4-7, 14, 15, 16-20, 32-33 of the Secretariat memorandum on "historic bays" (A/CONF.13/1).

[63] See Gidel, op. cit., pages 625 *et seq.* and the Secretariat memorandum on "historic bays" (A/CONF.13/1), pages 21 *et seq.*

asserted that its citizens had the exclusive right to fish in the area, and had, in accordance with this assertion, kept foreign fishermen away from the area or taken action against them. In that case the State in fact exercised sovereignty over the area, and its claim, on a historical basis, that it had the right to continue to do so would be a claim to the area as its "historic waters". The authority exercised by the State would be commensurate to the claim and would form a valid basis for the claim (without prejudice to the condition that the other requirements for the title must also be fulfilled).

87. The reasoning may be summarized as follows. A claim to "historic waters" is a claim by a State, based on an historic title, to a maritime area as part of its national domain; it is a claim to sovereignty over the area. The activities carried on by the State in the area or, in other words, the authority continuously exercised by the State in the area must be commensurate with the claim. The authority exercised must consequently be sovereignty, the State must have acted and act as the sovereign of the area.[65]

88. This does not mean, however, that the State must have exercised all the rights or duties which are included in the concept of sovereignty. The main consideration is that in the area and with respect to the area the State carried on activities which pertain to the sovereign of the area. Without venturing to present a catalogue of such activities, some examples may be given to illustrate the kind of acts by which the authority required as a basis for the claim might be established.

(b) *Acts by which the authority is exercised*

89. It may be useful to begin by quoting the opinions of some prominent writers on the subject. Gidel, in discussing what he calls the *actes d'appropriation* to which the claiming State must have proceeded, states as follows:

> "It is hard to specify categorically what kind of acts of appropriation constitute sufficient evidence: the exclusion from these areas of foreign vessels or their subjection to rules imposed by the coastal State which exceed the normal scope of regulations made in the interests of navigation would obviously be acts affording convincing evidence of the State's intent. It would, however, be too strict to insist that only such acts constitute evidence. In the Grisbadarna dispute between Sweden and Norway, the judgement of 23 October 1909 mentions that 'Sweden has performed various acts . . . owing to her conviction that these regions were Swedish, as, for instance, the placing of beacons, the measurement of the sea, and the installation of a light-boat, being acts which involved considerable expense and in doing which she not only thought that she was exercising her right but even more that she was performing her duty'."[66]

90. Regarding the kind of acts mentioned in the first part of the above quotation, Bourquin is virtually in agreement with Gidel. Bourquin says:

> "What acts under municipal law can be cited as expressing its desire to act as the sovereign? That is a matter very difficult, if not impossible, to determine *a priori*. There are some acts which are manifestly not open to any misunderstanding in this regard. The State which forbids foreign ships to penetrate the bay or to fish therein indisputably demonstrates by such action its desire to act as the sovereign."[67]

He is more doubtful or flexible with respect to the measures of assistance to navigation mentioned in the second part of Gidel's statement.

> "There are, however, some borderline cases. Thus, the placing of lights or beacons may sometimes appear to be an act of sovereignty, while is other circumstances it may have no such significance."[68]

91. Bustamante, in a draft convention prepared by him with a view to assisting the 1930 Hague Codification Conference, included an article relevant to the question now discussed. It reads as follows:

> "There are expected from the provisions of the two foregoing articles, in regard to limits and distance, those bays or estuaries called historic, viz., those over which the coastal State or States, or their constituents, have traditionally exercised and maintained their sovereign ownership, either by provisions of internal legislation and jurisdiction, or by deeds or writs of the authorities."[69]

92. Substantially the same article was included in the "project" submitted in 1933 to the Seventh International Conference of American States by the American Institute of International Law.[70]

93. In the *Fisheries* case, Norway stated in its Counter-Memorial:

> "It cannot seriously be questioned that, in the application of the theory of historic waters, acts under municipal law on the part of the coastal State are of the essence. Such acts are implicit in an historic title. It is the exercise of sovereignty that lies at the basis of the title. It is the peaceful and continuous exercise thereof over a prolonged period that assumes an international significance and becomes one of the elements of the international juridical order."[71]

And having asked how sovereignty is asserted, the Counter-Memorial replies:

> "Above all, by action under municipal law (laws, regulations, administrative measures, judicial decisions, etc.)."[72]

94. The United Kingdom Government, while emphasizing that they were not in itself sufficient to establish the title, agreed that such acts by the State under municipal law (*actes d'ordre interne*) were essential to the establishment of an historic title to a maritime territory.[73]

95. These examples furnish some guidance as to the kind of acts which are required. In the first place

[65] Cf. Johnson, op. cit., pages 344-345 regarding the exercise of authority necessary as a basis for acquisitive prescription.

[66] Gidel, op. cit., page 633.

[67] Bourquin, op. cit., page 43.

[68] *Ibid.* See also the statements emanating from the Ministry of Foreign Affairs of the Netherlands in 1848 and quoted by Gidel, op. cit., page 633, footnote 3.

[69] Bustamante, *The Territorial Sea* (1930), page 142.

[70] See the Secretariat memorandum on "historic bays" (A/CONF.13/1), page 14.

[71] *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, vol. I, pages 567-568.

[72] *Ibid.*, page 568.

[73] Op. cit., vol. II, page 648. See also the Secretariat memorandum on "historic bays" (A/CONF.13/1), page 32.

the acts must emanate from the State or its organs. Acts of private individuals would not be sufficient —unless, in exceptional circumstances, they might be considered as ultimately expressing the authority of the State. As Sir Arnold McNair said in his dissenting opinion in the *Fisheries* case:

> "Another rule of law that appears to me to be relevant to the question of historic title is that some proof is usually required of the exercise of State jurisdiction, and that the independent activity of private individuals is of little value unless it can be shown that they have acted in pursuance of a licence or some other authority received from their Governments or that in some other way their Governments have asserted jurisdiction through them."[74]

96. Furthermore, the acts must be public; they must be acts by which the State openly manifests its will to exercise authority over the territory. The acts must have the notoriety which is normal for acts of State. Secret acts could not form the basis of a historic title; the other State must have at least the opportunity of knowing what is going on.[75]

97. Another important requirement is that the acts must be such as to ensure that the exercise of authority is effective.

(c) *Effectiveness of authority exercised*

98. On this point there is full agreement in theory and practice. Bourquin expresses the general opinion in these words:

> "Sovereignty must be effectively exercised; the intent of the State must be expressed by deeds and not merely by proclamations."[76]

99. This does not, however, imply that the State necessarily must have undertaken concrete action to enforce its relevant laws and regulations within or with respect to the area claimed. It is not impossible that these laws and regulations were respected without the State having to resort to particular acts of enforcement. It is, however, essential that, to the extent that action on the part of the State and its organs was necessary to maintain authority over the area, such action was undertaken.

100. The first requirement to be fulfilled in order to establish a basis for a title to "historic waters" can therefore be described as the effective exercise of sovereignty over the area by appropriate action on the part of the claiming State. We can now proceed to the second requirement, namely, that this exercise of sovereignty continued for a time sufficient to confer upon it the quality of usage.

2. *Continuity of the exercise of authority: usage*

101. A study of the extensive material included in the Secretariat memorandum on "historic bays" (A/CONF.13/1) and drawn from State practice, arbitral and judicial cases, codification projects and opinions of learned authors, provides ample proof of the dominant view that usage is required for the establishment of title to "historic waters". This view seems natural and logical considering that the title to the area is an *historic* title.[77] A great variety of terms is used in describing and qualifying the usage required. A few of the terms employed in the codification projects mentioned in the memorandum[78] may illustrate this variety: "continuous usage of long standing" [*usage continu et séculaire*] (Institute of International Law 1894), "international usage" (Institute of International Law 1928), "established usage" (Harvard draft 1930), "continued and well-established usage" (American Institute of International Law 1925), "established usage generally recognized by the nations" (International Law Association 1926), "immemorial usage" (Japanese International Law Society 1926), "continuous and immemorial usage" (Schücking draft 1926).

102. The term "usage" is not wholly unambiguous. On the one hand it can mean a generalized pattern of behaviour, i.e., the fact that many persons behave in the same (or a similar) way. On the other hand it can mean the repetition by the same person of the same (or a similar) activity. It is important to distinguish between these two meanings or "usage", for while usage in the former sense may form the basis of a general rule of customary law, only usage in the latter sense can give rise to a historic title.

103. As was established above, a historic title to a maritime area must be based on the effective exercise of sovereignty over the area by the particular State claiming it. The activity from which the required usage must emerge is consequently a repeated or continued activity of this same State. The passage of time is therefore essential; the State must have kept up its exercise of sovereignty over the area for a considerable time.

104. On the other hand, no precise length of time can be indicated as necessary to build the usage on which the historic title must be based. It must remain a matter of judgement when sufficient time has elapsed for the usage to emerge. The addition of the adjective "immemorial" is of little assistance in this respect. Taken literally "immemorial" would be a wholly impractical notion;[79] the term "immemorial" could, therefore, at the utmost be understood as emphasizing, in a vague manner, the time-element contained in the concept of "usage". It will anyhow be a question of evaluation whether, considering the circumstances of the particular case, time has given rise to a usage.

105. Usage, in terms of a continued and effective exercise of sovereignty over the area by the State claiming it, is then a necessary requirement for the establishment of a historic title to the area by that State. But is usage in this sense also sufficient? There seems to be practically general agreement that besides this national usage, consideration must also be given to the international reaction to the said exercise of sovereignty. It is sometimes said that the national usage has to develop into an "international usage". This may be a way of underlining the importance of the attitude of foreign States in the creation of an historic title; in any case, a full understanding of the matter requires an analysis of the question how and to

[74] *I.C.J. Reports, 1951*, page 184. Cf. *Pleadings*, vol. II, page 657.

[75] The question of knowledge on the part of foreign States is further discussed below in paragraph 125 *et seq.*

[76] Op. cit., page 43.

[77] Regarding the opinion which pays less attention to the passage of time and lays more emphasis on the vital interests of the State claiming the area, see below paragraphs 134 *et seq.*

[78] Pages 14-15.

[79] Cf. Johnson, op. cit., page 339.

what extent the reaction of foreign States influences the growth of such a title.

3. *Attitude of foreign States*

106. In essence, this is the problem of the so-called acquiescence of foreign States. As was indicated above, according to a widely held opinion acquiescence in the exercise of sovereignty by the coastal State over the area claimed is necessary for the emergence of an historic title to the area. The connexion between this requirement of acquiescence and the opinion that "historic waters" are an exception to the general rules of international law governing the delimitation of maritime areas was also pointed out above. It might be recalled that the argument was on the following lines. The State which claims "historic waters" in effect claims a maritime area which according to general international law belongs to the high seas. As the high seas are *res communis omnium* and not *res nullius*, title to the area cannot be obtained by occupation. The acquisition by historic title is "adverse acquisition", akin to acquisition by prescription, in other words, title to "historic waters" is obtained by a process through which the originally lawful owners, the community of States, are replaced by the coastal State. Title to "historic waters", therefore, has its origin in an illegal situation which was subsequently validated. This validation could not take place by the mere passage of time; it must be consummated by the acquiescence of the rightful owners.

107. The argument seems logically to imply that acquiescence is a form of consent. However, here a difficulty arises. If acquiescence is a form of consent, acquiescence would amount to *recognition* of the sovereignty of the coastal State over the area in question and reliance on a historic title would be superfluous. If the continued exercise of sovereignty during a length of time had to be validated by acquiescence in the meaning of consent by the foreign States concerned, the lapse of time, i.e., the historical element, would be immaterial.

108. Some of the defenders of the concept of acquiescence, on the one hand, desiring to avoid a confusion with recognition and, on the other hand, unwilling to concede that the continued exercise of sovereignty by the coastal State over the area claimed could in itself constitute a historic title to the area, have endeavoured to vindicate the idea of acquiescence by interpreting it as an essentially negative concept. The term "acquiescence" is said to "describe the inaction of a State which is faced with a situation constituting a threat to or infringement of its rights",[80] or to mean that the foreign States "have simply been inactive".[81] The historic title would then be based on the continued effective exercise of sovereignty by the coastal States over the area in question combined with the inaction of the other States. In this view,

> "the true role of the theory [of historic rights] is to compensate for the lack of any evidence of express or active consent by States, by creating a presumption of acquiescence arising from the facts of the case and from the inaction and toleration of States."[82]

[80] McGibbon, "The Scope of Acquiescence in International Law", in *British Year Book of International Law*, vol. 31 (1954), page 143.

[81] Fitzmaurice in *British Year Book of International Law*, vol. 30 (1953), page 29.

[82] Fitzmaurice, *ibid.*, page 30.

109. It is interesting to note that the protagonists of the concept of acquiescence, if they reduce this concept to mean merely inaction or toleration, arrive at a position which is very near to the one taken by those who oppose the idea that the régime of "historic waters" is an exceptional régime and the consequent idea that the acquiescence of foreign States is necessary to acquire a title to historic waters. Bourquin, who as was seen above, is a spokesman for the latter opinion, states the following:

> "While it is wrong to say that the acquiescence of these States is required, it is true that if their reactions interfere with the peaceful and continuous exercise of sovereignty, no historic title can be formed.
>
> "In such cases the question to be asked is not whether the other States consented to the claims of the coastal State but whether they interfered with the action of that State to the point of divesting it of the two conditions required for the formation of an historic title.
>
> "Obviously only acts of opposition can have that effect. So long as the behaviour of the riparian State causes no protest abroad, the exercise of sovereignty continues unimpeded . . .
>
> "The absence of any reaction by foreign States is sufficient."[83]

110. The similarity of the final positions arrived at, both by some of the proponents and some of the opponents of the notion of acquiescence is striking: both seem to agree that inaction on the part of foreign States is sufficient to permit the emergence of a historic right. This would seem to suggest that the term "acquiescence" is ambiguous. In these circumstances, it might perhaps be better, in the interest of clarity, not to use the term "acquiescence" in this context. The term seems at least *prima facie* to convey the idea of consent and its use can therefore result in the conclusion that a historic title can arise only if concurrence on the part of foreign States has been demonstrated in a positive way. If the proponents of the necessity of acquiescence really have in mind only the negative aspect, i.e., toleration on the part of the foreign States, it would be preferable to use the term "toleration" which better expresses their thoughts. Moreover, there should be no difficulty in dropping the term "acquiescence" once the dubious theory that title to "historic waters" constitutes an exception to general international law has been discarded.

111. "Toleration" is furthermore the expression used by the International Court of Justice in the *Fisheries* case when discussing Norway's historic title to the system of delimitation which was an issue in the dispute. The Court said, *inter alia*:

> "In the light of these considerations, and in the absence of convincing evidence to the contrary, the Court is bound to hold that the Norwegian authorities applied their system of delimitation consistently and uninterruptedly from 1869 until the time when the dispute arose. From the standpoint of international law, it is now necessary to consider whether the application of the Norwegian system encountered any opposition from foreign States . . .

[83] Bourquin, op. cit., page 46. Bustamante is also against the idea of consent, see op. cit., page 100.

> "The general toleration of foreign States with regard to the Norwegian practice is an unchallenged fact."[84]

The Court continued further on in its judgement:

> "The Court notes that in respect of a situation which could only be strengthened with the passage of time, the United Kingdom Government refrained from formulating reservations.
>
> "The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom."[85]

In the Court's opinion, the consistent and prolonged application of the Norwegian system combined with the general toleration of foreign States gave rise to a historic right to apply the system. This opinion seems to correspond fairly well to the final positions taken both by the proponents and the opponents of the concept of "acquiescence", as set out in paragraphs 108 and 109.

112. However, even if it may be said that, whether the term "acquiescence" or the term "toleration" is used, there is substantial agreement that inaction on the part of foreign States is sufficient to permit an historic title to a maritime area to arise by effective and continued exercise of sovereignty over it by the coastal State during a considerable time, all difficulties in this respect are not solved. It is true, of course, that if there has been no reaction at any time from any foreign State, then there is no difficulty. But what happens if at any one time or another opposition from one or more foreign States occurred? Does any kind of opposition by any one State at any time preclude the historic title? It is *prima facie* highly improbable that the terms "inaction" or "toleration" would have to be interpreted so strictly. Before attempting a more precise answer, it would, however, be useful to examine more closely the three points which seem to be involved, namely, (i) what kind of opposition would prevent the historic title from emerging, (ii) how widespread in terms of the number of opposing States must the opposition be, and (iii) when must the opposition occur.

113. With regard to the first point, it is obvious that the opposition ending the inaction must be expressed in some kind of action. In the passage quoted above in paragraph 109, Bourquin states that:

> ". . . if their reactions [i.e., of foreign States] prevent the peaceful and continuous exercise of sovereignty, no historic title can be formed."[86]

Indeed, it is hardly doubtful that opposition by force on the part of foreign States would be a means of interrupting the process by which a historic title is formed. On the other hand it cannot be assumed that Bourquin, despite the use of the word *paisible*, would consider only opposition by force as effectively preventing the creation of a historic title. He also says in the passage quoted above that:

> ". . . so long as the behaviour of the riparian State causes no protest abroad, the exercise of sovereignty continues unimpeded."[87]

This seems to imply also a protest could be a means of hindering the emergence of a historic right.

114. If that is so, Bourquin's view would not be far from the opinion expressed by Fitzmaurice in these words:

> "Protest, in some shape or form or equivalent action, is necessary in order to stop the acquisition of a prescriptive right."[88]

In a footnote Fitzmaurice goes on to describe the action in question as follows:

> "Apart from the ordinary case of a diplomatic protest, or a proposal for reference to adjudication, the same effect could be achieved by a public statement denying the prescribing country's right, by resistance to the *enforcement* of the claim, or by counter-action of some kind."[89]

115. These are some of the acts by which the opposition of foreign States could be expressed, and there are, no doubt, other means which could be used. More important than establishing a list of acts, is to emphasize that whatever the acts they must effectively express a sustained opposition to the exercise of sovereignty by the coastal State over the area in question. To quote Fitzmaurice again:

> "Moreover the protest must be an effective one depending on what the circumstances require. A simple protest may suffice to begin with, but this may not be enough as time goes on."[90]

Should despite the protest the coastal State continue to exercise its sovereignty over the area, the opposition on the part of the foreign State must be maintained by renewed protests or some equivalent action.

116. The second point to be examined is how wide the opposition must be, to prevent the creation of a historic title. Is it sufficient that a single State effectively expresses its opposition? Hardly anybody would go as far as that. Gidel says on this point:

> "A single objection formulated by a single State will not invalidate the usage; furthermore all objections cannot be placed on an equal footing, regardless of their nature, the geographical or other situation of the objecting State."[91]

Bourquin[92] agrees with Gidel that one opposing State would not be sufficient to invalidate the usage. This seems, moreover, to be a generally accepted opinion. If the total absence of opposition is not a necessary requirement for the emergence of a historic right, it would seem to be a matter of judgement, subject to the circumstances in the particular case, how widespread the opposition must be to prevent the historic title from materializing.

117. In this connexion it is interesting to note, in the above quotation, that Gidel is not willing to place all the opposing States on the same level. The opposition of one State may according to circumstances carry more weight than the opposition of another State.

[84] Fisheries case, Judgement of 18 December 1951, *I.C.J. Reports, 1951*, page 138.

[85] *Ibid.*, page 139.

[86] Bourquin, op. cit., page 46.

[87] *Ibid.*

[88] *British Year Book of International Law*, vol. 30 (1953), page 42. A historic right to a maritime area is in Fitzmaurice's opinion a prescriptive right, see op. cit., pages 27-28.

[89] Op. cit., page 42, footnote 1.

[90] Op. cit., page 42, see also pages 28-29.

[91] Gidel, op. cit., page 634.

[92] Bourquin, op. cit., pages 47-48.

Fitzmaurice follows the same line of reasoning when he says:

> "It is obvious that, depending on the circumstances, the acquiescence of certain States must be of far greater weight and moment in establishing the existence of a prescriptive or historic right than that of others. Thus the consent, either expressly given or reasonably to be inferred, of those States which, whether on account of geographical proximity, or commercial or other interest in the subject-matter, etc., are directly affected by the claim, may be almost enough in itself to legitimize it; while a clear absence of consent on the part of such States would certainly suffice to prevent the establishment of the right. Equally, acquiescence or refusal on the part of States whose interest in the matter, actual or potential, is non-existent, or only slight, may have little practical significance."[93]

118. The position, outlined in the passages quoted from Gidel and Fitzmaurice, that the same weight need not be accorded to the attitude of each State, seems to be reasonable and realistic. It may, perhaps, be pointed out, however, that this position is hardly consonant with the assumption that the right to "historic waters" is an exception to the general rules of international law. If that assumption were correct, if the State claiming "historic waters" were really claiming a part of the high seas, a part of a *res communis*, unless a historic title could be established, it would seem that any State, any member of the community of States, should be able to prevent by its opposition the emergence of the historic title. How could in such case some States be entitled to give away rights which belong to all States and how could in the matter of acquiescence or opposition greater weight be given to one State than to the other? On the other hand, if it is admitted that the legal situation regarding the delimitation of the maritime territory of States is not clear, that the customary international law in this respect is in doubt, and that it is against that background that the existence or non-existence of historic rights to particular areas has to be considered, then the view seems sensible and practical that this question of opposition is a question of appreciation, not a question of arithmetic, and that the opposition of one State in view of the circumstances in the particular case may well be of greater importance than that of another State.

119. In this connexion, it may be useful to try to visualize how a dispute with respect to "historic waters" is most likely to arise. Although it is theoretically possible, it is not probable that a dispute will arise because all or most foreign States refuse to recognize the historic right of a coastal State to a certain maritime area. Many States may have no great interest in the question and would therefore have no reason to go out of their way to antagonize the coastal State. The dispute would be most likely to arise through the opposition of neighbouring States or of those States which have a particular interest in the area. It would therefore be only natural if the arbitrator or tribunal having to settle the dispute paid particular attention to the previous attitute of those States and, in determining the existence of an historic title, gave special weight to the fact that these States, in the formative period of the disputed title, had or had not effectively opposed the exercise of sovereignty by the coastal State over the area in question.

120. With regard to point two, relative to the question how wide-spread the opposition must be to preclude the emergence of an historic title, it may therefore be said that this is a matter of appreciation in the light of the circumstances in each case. How this appreciation may be made, can be illustrated by the last part of the statement of the International Court of Justice in the *Fisheries* case, referred to above in paragraph 111:

> "The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom."[94]

121. It remains to deal with the third point, namely, the question at what time the opposition must occur in order to prevent the creation of an historic title. It is evident that the opposition must have been effectively expressed before the historic title came into being. After a State has exercised sovereignty over a maritime area during a considerable time under general toleration by the foreign States, and an historic right to the area has thus emerged, it is not possible for one or more States to reverse the process by coming forward with a protest against the accomplished fact. The historic title is already in existence and stands despite the belated opposition.

122. However, by this general and rather obvious statement the problem is not solved. There are in any case two questions which need to be discussed in this connexion. The first question is: how long is the considerable time during which sovereignty has to be exercised and tolerated? The second question is: from what moment does this time start to run?

123. Regarding the first question it can only be said that the length of time necessary for a historic right to emerge is a matter of judgement; no precise time can be indicated. However, as the exercise of sovereignty has to develop into a usage the length of time must be considerable. Reference may be made in that respect to the explanations given above in paragraphs 101-104.

124. The second question has several aspects. In the first place the time cannot begin to run until the exercise of sovereignty has begun. As was said above, the exercise of sovereignty must be effective and public and the time can therefore not begin to run until these two conditions have been fulfilled.

125. Here a problem arises: is it sufficient that the exercise of sovereignty is public or is it also necessary that the foreign States actually have knowledge of this exercise of sovereignty? In other words, can a foreign State offer as a valid excuse for its inaction, the fact that it had no actual knowledge of the situation, and demand that the time within which it must manifest its opposition should be construed to run only from the moment it received such knowledge?

126. Those who consider the right to "historic waters" to be an exception to general international law and therefore have a tendency to require at least tacit or presumed consent on the part of foreign States, are also inclined to require knowledge of the situation by these States, in order that absence of opposition may be held against them. For instance Fitzmaurice states:

> "Clearly, absence of opposition is relevant only in so far as it implies consent, acquiescence or toleration on the part of the States concerned; but absence of opposition *per se* will not necessarily or always imply this. It depends on whether the circumstances are such that opposition is called for because the absence of it will cause consent or acquiescence to be presumed. The circumstances are not invariably of this character, particularly for instance where the practice or usage concerned has not been brought to the knowledge of other States, or at all events lacks the notoriety from which such knowledge might be presumed: or again, if the practice or usage concerned takes a form such that it is not reasonably possible for other States to infer what its true character is."[95]

127. The preference is evident in the quotation for a system according to which consent or acquiescence on the part of foreign States is required and consequently also their knowledge of the situation. On the other hand, the language used seems to indicate that also implied consent and presumed knowledge would be sufficient. The requirement of knowledge and consent seems to be more theoretical than real; in the end the author seems to be satisfied with notoriety from which knowledge may be presumed.

128. In any case, nobody seems to demand that the coastal State must formally notify each and all of the foreign States that it has assumed sovereignty over the area, before the time necessary to establish a usage will begin to run. If that is so, the notoriety of the situation: the public exercise of sovereignty over the area, would in reality be sufficient. It may, moreover, be recalled that in the *Fisheries* case, the International Court of Justice referred to

> "the notoriety essential to provide the basis of an historic title."[96]

129. Against this opinion that notoriety is sufficient, the objection has been made that its effect would be to place an excessive burden of vigilance on States, as they would be forced to follow the activities of the legislative and executive organs of other States more closely than is usually the case.[97] It is, however, doubtful if this objection is justified. It may be argued that if a State had a real interest in a maritime area it would be natural for that State to follow closely what was going on there, and that the fact that the State was unaware of the situation was a good indication that its interest in the area was slight or non-existent. It might happen that at a later stage the State developed an interest in the area and so became aware of the circumstance that the coastal State for a long time had exercised sovereignty over it. If the newcomer State now found that this was against its interests, is it really a justifiable view to assert that this State could validly object to the coastal State's claim to an historic title to the area on the ground that it did not know until recently what was going on in the area?

130. In conclusion therefore, there seem to be strong reasons for holding that notoriety of the exercise of sovereignty, in other words, open and public exercise of sovereignty, is required rather than actual knowledge by the foreign States of the activities of the coastal States in the area.

131. Assuming now that the time necessary for the formation of a historic title has begun to run, sufficient opposition to block the title may not be forthcoming immediately. One or two States may protest, but still the over-all situation may be one of general toleration on the part of the foreign States. Opposition may build up successively and finally reach a stage where it no longer can be said that the exercise of sovereignty of the coastal State over the area is generally tolerated. Thereby the emergence of the historic title will be prevented, provided that this stage is not reached too late, i.e., at a time when the title has already come into existence because sufficient time under the condition of general toleration has already elapsed. There would therefore be a kind of race taking place between the lapse of time and the building up of the opposition. The outcome of the race is necessarily a matter of judgement as there are no precise criteria to be applied to either of the two competing factors. There is no precise time limit for the lapse of time necessary to allow the emergence of the historic right, and there is no precise measure for the amount of opposition which is necessary to exclude "general toleration".

132. This concludes the discussion of the three factors which according to the dominant opinion have to be taken into consideration in determining whether a right to "historic waters" has arisen. The result of the discussion would seem to be that for such a title to emerge, the coastal State must have effectively exercised sovereignty over the area continuously during a time sufficient to create a usage and have done so under the general toleration of the community of States.

133. It remains to study the fourth factor which is sometimes referred to, namely, the question of the vital interests of the coastal State in the area.

4. *Question of the vital interests of the coastal State in the area claimed*

134. The Secretariat memorandum on "historic bays" (A/CONF.13/1), paragraphs 151 *et seq.*, describes a view taken by some authors and Governments, according to which a right to "historic bays" may be based not only on long usage, but also on other "particular circumstances" such as geographical configuration, requirements of self-defence or other vital interests of the coastal State. The origin of this idea is usually ascribed to Dr. Drago's dissenting opinion in the North Atlantic Coast Fisheries Arbitration (1910) where he stated that:

> "a certain class of bays, which might be properly called the historical bays, such as Chesapeake Bay and Delaware Bay in North America and the great estuary of the River Plate in South America, form a class distinct and apart and undoubtedly belong to the littoral country, whatever be their depth of penetration and the width of their mouths, when such country has asserted its sovereignty over them, and particular circumstances such as geographical configuration, immemorial usage and above all, the

[93] Fitzmaurice, op. cit., pages 31-32.

[94] *I.C.J. Reports, 1951*, page 139.

[95] *British Year Book of International Law*, vol. 30 (1935), page 33.

[96] *I.C.J. Reports, 1951*, page 139.

[97] Cf. *British Year Book of International Law*, vol. 30 (1953), page 42.

requirements of self-defence, justify such a pretention."[98]

The basis for Dr. Drago's statement is evidently that in the classical cases of "historic bays" such as Chesapeake Bay and Delaware Bay, such "particular circumstances" were put forward in justification of the claims.

135. The significance of this line of thought is not so much that usage may have to be fortified by other reasons such as geographical configuration or vital interest in order to form a firm basis for a claim to "historic bays". It is rather that these other "particular circumstances" may justify the claim without the necessity of establishing also "immemorial usage". This is in any case the direction in which the idea developed, as may clearly be seen from the information given in the Secretariat memorandum.

136. Illuminating in this respect is article 7 of the draft international convention submitted at the Buenos Aires Conference of the International Law Association in 1922 by Captain Storny, reading as follows:

"A State may include within the limits of its territorial sea the estuaries, gulfs, bays or parts of the adjacent sea in which it has established its jurisdiction by continuous and immemorial usage or which, when these precedents do not exist, are unavoidably necessary according to the conception of article 2; that is to say, for the requirements of self-defence or neutrality or for ensuring the various navigation and coastal maritime police services."[99]

137. Also important is the statement of the Portuguese representative at the 1930 Hague Codification Conference:

"Moreover, if certain States have essential needs, I consider that those needs are as worthy of respect as usage itself, or even more so. Needs are imposed by modern social conditions, and if we respect agelong and immemorial usage which is the outcome of needs experienced by States in long past times, why should we not respect the needs which modern life, with all its improvements and its demands, imposes upon States."[100]

138. There is undoubtedly some justification for this view, and it is also understandable that it appeals to States which reached independence rather late and therefore are not able to base their claims on long usage.[101]

139. On the other hand it hardly seems appropriate to deal with the problem of these vital needs in the context of "historic bays". Bourquin, who otherwise appreciates the importance of the vital interests of the State with regard to bays, says in this respect:

"But why should this factor be considered strictly within the context of 'historic titles'? However widely the concept of a 'historic title' is construed, surely it cannot be claimed in circumstances where the historic element is wholly absent. The 'historic title' is one thing; the 'vital interest' is another."[102]

It is difficult to disagree with that opinion.

140. Attention may also be drawn to another aspect of the matter, which seems worth considering. In a convention on the territorial sea, it makes good sense to reserve the position of "historic bays". On the contrary, giving the parties the right to claim "vital bays" would come near to destroying the usefulness of any provision in the convention regarding the definition or delimitation of bays.

5. Question of "historic waters" the coasts of which belong to two or more States

141. In the foregoing discussion, it has been assumed that there was only one riparian State bordering the area in question and that therefore one State alone was interested in claiming it. What is the situation if there are two or more States bordering the area? Will that circumstance materially change the requirements discussed above for the emergence of an historic title to the area? Without pretending to deal with the matter exhaustively, a few considerations may be offered with respect to this problem.[103]

142. These questions may be discussed in regard to two different geographical settings both of which are in some way related to the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

143. Article 12 of the Convention deals with the situation where the coasts of two States are opposite or adjacent to each other, and paragraph 1 of the article provides as follows:

"Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision."[104]

144. It does not seem that in this case the fact that there is more than one coastal State would materially change the requirements for the establishment of an historic title. There is no doubt that an historic title can arise in that situation; at least this is assumed by the wording of the article. In other words, the emergence of an historic title for one of the coastal States is not prevented by the mere existence of another coastal State. On the other hand, in evaluating the attitude of the foreign States regarding the claim to an historic title,[105] it would seem reasonable to pay special attention to the attitude of the other coastal States.

145. The second geographical situation of relevance is the case of a bay bordered by two or more States.[106] This situation is related to the above-mentioned Geneva Convention in a negative way, as its article on bays (article 7) deals only with bays the coasts of which

[98] See quotation in A/CONF.13/1, paragraph 92.
[99] *Ibid.*, paragraph 132.
[100] *Ibid.*, paragraph 155.
[101] See the statement by Mr. García-Amador in the International Law Commission and referred to in the footnote to paragraph 7 above.
[102] Bourquin, op. cit., page 521 quoted and translated in A/CONF.13/1, paragraph 158.

[103] The question is also dealt with in the Secretariat memorandum on "historic bays" A/CONF.13/1, paras. 44-47 and 131-136.
[104] *United Nations Conference on the Law of the Sea, Official Records*, vol. II, page 133.
[105] Cf. above paragraphs 117-119.
[106] Cf. Gidel, op. cit., pages 626-627.

belong to a single State. The reason for this limitation on the scope of the article was that the International Law Commission, which prepared the text forming the basis of the Convention, considered that it did not have enough information regarding bays surrounded by two or more States to include provisions regarding them. The question of such bays was therefore left open as far as the Convention is concerned, and it would, indeed, seem to be a problem which could be discussed in depth only after additional information on the matter has been received from Governments. The few remarks which are made below in this paper are therefore of a very preliminary character.

146. Historic claims to a bay bordered by two or more States might be envisaged in two different circumstances. The claim may be made jointly by all the bordering States or it may be presented by one or more, but not all of these States.

147. If all the bordering States act jointly to claim historic title to a bay, it would seem that in principle what has been said above regarding a claim to historic title by a single State would apply to this group of States. One problem which might be raised in this connexion, without any attempt being made to solve it, is whether sovereignty over the bay must during the required period have been exercised by all the States claiming title or whether it is sufficient that during that period one or more of them exercised sovereignty over the bay.

148. The second hypothesis in which a claim to a bay bordered by two or more States might be envisaged arises where only one or several of them jointly, but not all of them, claim the area. In this case, it is rather improbable that a historic title to the bay could ever arise in favour of the claiming State or States. For it must be expected that an attempt to exercise sovereignty over the bay on the part of one or some of the riparian States would cause immediate and strong opposition on the part of the other riparian State or States. It would therefore be difficult to imagine that the requirement of toleration by foreign States could in these circumstances be fulfilled. It must be emphasized in this connexion that, when it was said above that the opposition of one or two foreign States would not necessarily exclude the existence of a general toleration on the part of foreign States, this statement referred to waters bordered by a single coastal State. In the case of a bay surrounded by several States, the persistent opposition by one or more of the riparian States to the exercise of sovereignty over the bay by one or more of the other riparian States must naturally be of great if not decisive importance in evaluating whether or not the requirement of toleration had been fulfilled.

D. Burden of proof

149. As the existence of a right to "historic waters" is to such a large extent a matter of judgement, the question of proof and in particular the problem of the burden of proof would seem to be of a rather secondary interest. The task of the parties to a dispute seems to be less to establish certain facts than to persuade the judges to follow their respective opinions regarding the evaluation of the facts. Still the question of the burden of proof cannot be ignored, in particular since it is one of the problems usually raised in connexion with the right to "historic waters".

150. In the memorandum of the Secretariat on "historic bays" (A/CONF.13/1), paragraphs 164-166, attention was drawn to certain significant statements in doctrine and practice regarding the onus of proof with respect to "historic waters". Gidel is quoted as follows:

"The onus of proof rests on the State which claims that certain maritime areas close to its coast possess the character of internal waters which they would not normally possess. The coastal State is the petitioner in this sort of action. Its claims constitute an encroachment on the high seas; and it would be inconsistent with the principle of the freedom of the high seas, which remains the essential basis of the whole public international law of the seas, to shift the onus of proof onto the States prejudiced by that reduction of the high seas which is the consequence of the appropriation of certain waters by the claimant State."[107]

151. Reference is also made to Basis of Discussion No. 8 submitted to the 1930 Hague Codification Conference and reading:

"The belt of territorial waters shall be measured from a straight line drawn across the entrance of a bay, whatever its breadth may be, if by usage the bay is subject to the exclusive authority of the coastal State; the onus of providing such usage is upon the coastal State."[108]

152. Finally it is pointed out that in the *Fisheries* case, the United Kingdom and Norway agreed that the onus of proof was on the State claiming a historic title, although they disagreed regarding the conditions and nature of the proof.

It may be interesting to quote the parties themselves in that respect. The Norwegian Government stated in its Counter-Memorial under the title "the proof of an historic title":

"The usage must be proved by the State which invokes it. Regarding this principle the Norwegian Government agrees with the United Kingdom Government. But it does not agree with it regarding the conditions of proof to be met and especially regarding the nature of the elements of proof to be produced."[109]

The United Kingdom Government said:

"The Norwegian Government ... while disputing the contentions of the United Kingdom Government in regard to the conditions and nature of the proof of an historic title, agrees that the burden of proof lies upon the State which invokes the historic title. This admission that the burden of proof lies upon the claimant State was only to be expected in view of the abundant authority to that effect. The role of the historic element being to validate what is an exception to general rules and therefore intrinsically invalid, it is natural that the burden of proof should so emphatically be placed upon the coastal State. ..."[110]

153. There is doubt that there is abundant authority for the view that the burden of proof lies upon the

[107] Gidel, op. cit., page 602.
[108] *Acts of the Conference for the Codification of International Law*, vol. III: Minutes of the Second Committee, page 179; also cited in the aforesaid memorandum by the Secretariat (A/CONF.13/1), para. 87.
[109] *International Court of Justice, Pleadings, Oral Arguments, Documents, Fisheries Case*, vol. I, page 566.
[110] Op. cit., vol. II, pages 685-646.

claimant State. Some who hold that view are mainly influenced, as is evident from the statements of Gidel and of the United Kingdom, by their belief that the historic title is an exception to the general rules of international law and that "historic waters" is an encroachment on the freedom of the high seas. The difficulties involved in this line of reasoning have been referred to above and may be borne in mind also with respect to the question of the burden of proof. Others who say that the burden of proof lies upon the claimant may do so merely because it seems to restate a widely accepted procedural rule. It can, however, be doubted that the rule that the State claiming historic title has the burden of proof is equal to the procedural rule that the claimant must prove his case. The meaning of the former rule is evidently that the burden of proof lies on the State claiming the title whether that State is the claimant or the defendant in a dispute.

154. Moreover, the statement that the burden of proof is on the State claiming the historic title does not have a very precise meaning. It is significant in that respect that it could be accepted by both parties in the *Fisheries* case although they disagreed sharply as to what had to be proved and how. For the purpose of a useful discussion of the question, it is necessary to relate the burden of proof to the various factors which must be present to create an historic title to a maritime area.

155. As was pointed out above, the first requirement for the development of an historic right to a maritime area is the effective exercise of sovereignty over the area by the State claiming the right. There seems to be no doubt that the State claiming the area has to show that it has exercised the required sovereignty. To do that it would have to prove certain facts such as for instance that in certain instances it enforced its laws and regulations in or with respect to the area. These facts the State must prove to the satisfaction of the arbitrator (or Court or whoever has to decide whether the title exists or not). The opposing State (or States) might perhaps allege other facts intended to show that the required exercise of sovereignty did not take place, and the latter State must then show these facts to the satisfaction of the arbitrator. Each of the opponents therefore bears the burden of proof with respect to the facts on which they rely. On the basis of the facts which he considers to be proved, the arbitrator then decides whether it has been demonstrated that the required sovereignty was exercised. Obviously, this involves an evaluation not only of the evidence presented regarding the facts but also of the importance of these facts as signs of the alleged exercise of sovereignty. If the arbitrator finds that effective sovereignty has not been exercised, the State claiming the historic title loses this necessary basis for its claim. In that sense the burden of proof with respect to the exercise of sovereignty is undoubtedly on the State claiming the title.

156. In order to give rise to an historic title, the exercise of sovereignty, as was seen above, must not only be effective but also prolonged, continued. It must develop into a national usage. To persuade the arbitrator that this is the case, the State claiming title would again bring forward certain facts such as the fact that the enforcement of its laws and regulations had gone on for a number of years. These facts the State would have to prove. The opposing State (or States) might again allege other facts which in its opinion indicated that the claiming State had not been able to maintain its authority over the area uninterruptedly and that therefore, no prolonged, continued exercise of sovereignty had taken place. The opposing State would have to prove the facts on which its contentions were based. The arbitrator would then again have to evaluate the facts which he considers as established in order to decide whether or not an effective exercise of sovereignty by the State claiming title had taken place continuously during a sufficient period for a usage to have developed. If he finds that this was not the case, the State claiming title would have lost a necessary basis for its claim and in that sense it therefore carries the burden of proof regarding this point.

157. The third factor to take into consideration in relation to the emergence of an historic title is the attitude of the foreign States. The problem of the burden of proof is slightly more complicated with respect to this factor, because of the two views opposing each other in this respect: one, that "acquiescence" in the meaning of tacit or presumed consent by the foreign States is required for the emergence of the historic title, and the other, that "general toleration" on the part of these States is sufficient. The general pattern of proof will, however, be the same as in regard to the previous factors. Whether the State claiming the title endeavours to prove "acquiescence" or "toleration", it will assert certain facts in support of its contention that "acquiescence" (or "toleration") existed, and these facts the State would have to prove to the satisfaction of the arbitrator. And similarly the opponent (or opponents) would bring forward certain facts in support of his assertion that "acquiescence" (or "toleration") did not exist; for these facts, the opponent would have the burden of proof. The facts upon which the claiming State and the opposing State (or States) rely may not be the same, if they attempt to prove (or disprove) "acquiescence" as if they attempt to prove (or disprove) "toleration", but in either case they have the burden of proof for the facts which they allege. Whether "acquiescence" or "toleration" is required is not a question of fact but a question of law, and each of the parties will no doubt try to persuade the arbitrator that its view in this respect is correct, but this is not a question of evidence. Finally the arbitrator will decide whether "acquiescence" or "toleration" is the necessary requirement and on the basis of the facts he will also decide whether the requirement of "acquiescence" (or "toleration") was fulfilled. If he comes to the conclusion that this was not the case, the State claiming title loses an indispensable basis for its claim of title, and in that sense it bears the burden of proof.

158. In summarizing this discussion of the problem of the burden of proof, it may be said that the general statement that the burden of proof is on the State claiming historic title to a maritime area is not of much value. If the statement means that, should the arbitrator (or whoever has to decide) not find that all the elements of the title (all the requirements for the existence of the title) are present, the State claiming the title will lose, then the statement simply asserts the obvious. The elements of the title have evidently to be proved to the satisfaction of the arbitrator, otherwise he will not accept the title. And this holds true whether or not the title is considered to be an exception to the general rules of international law, so that burden of proof is not *really* a logical consequence of the allegedly exceptional character of the title. In a dispute, each

party has to prove the facts on which he relies, otherwise the arbitrator will not take these alleged facts into account. Furthermore, as regards the interpretation of the law and the evaluation of the facts in the light of this interpretation, each party will naturally try to persuade the arbitrator to adopt the party's views in this respect; to the extent that the party does not succeed in this, it will obviously have to bear the burden of his failure.

159. On the basis of what has just been said, it is submitted that it would be unnecessary, and possibly misleading, to include in a regulation of the régime of "historic waters" a general statement regarding the burden of proof. It would seem preferable to leave that question to be solved by the procedural rules which may be applicable in a particular case.

E. Legal status of the waters regarded as "historic waters"

160. The main question to be discussed in this section is whether "historic waters" are internal waters of the coastal State or are to be considered as part of its territorial sea. The importance of this problem lies in the fact that, according to the international law of the sea, the coastal State must allow the innocent passage of foreign ships through its territorial sea, but has no such obligation with respect to its internal waters.

161. As far as "historic bays" are concerned, the matter was dealt with in paragraphs 94-136 of the Secretariat memorandum on "historic bays" (A/CONF.13/1), and reference is made to the material and discussion which may be found there.

162. In paragraph 101 of the memorandum it is pointed out that, until the International Law Commission in its drafts on the law of the sea made a clear distinction between the "territorial sea" and "internal waters", the terminology used both in the doctrine and in State practice was ambiguous. "Territorial waters" could be used as a term comprehending both the "territorial sea" and "internal waters"; what is now known as "internal waters" was therefore often referred to as "territorial waters". In attempting to ascertain the opinions of authors and Governments in this field, one has therefore to take care not to be misled by the uncertain terminology used.

163. If allowance is made for this problem of terminology, the dominant opinion, as gathered from the statements assembled in the memorandum, seems to be that "historic bays" the coasts of which belong to a single State are internal waters. This was to be expected, for it is generally agreed that the waters inside the closing line of a bay are internal waters and that the territorial sea begins outside that line.

164. On the other hand, it should be recalled that the right to "historic bays" is based on the effective exercise of sovereignty over the area claimed, together with the general toleration of foreign States. The sovereignty exercised can be either sovereignty as over internal waters or sovereignty as over the territorial sea. In principle, the scope of the historic title emerging from the continued exercise of sovereignty should not be wider in scope than the scope of the sovereignty actually exercised. If the claimant State exercised sovereignty as over internal waters, the area claimed would be internal waters, and if the sovereignty exercised was sovereignty as over the territorial sea, the area would be territorial sea. For instance if the claimant State allowed the innocent passage of foreign ships through the waters claimed, it could not acquire an historic title to these waters as internal waters, only as territorial sea.

165. The seeming contradiction between the statement that "historic bays" are internal waters, and the conclusion that waters claimed on the basis of the exercise of sovereignty as over the territorial sea cannot be internal waters but only part of the territorial sea, is really one of terminology. In the latter case, it would be preferable not to speak of an "historic bay" but of "historic waters" of some other kind.

166. What was said above refers to "historic waters", the coasts of which belong to a single State. The principle set out in paragraph 164 would, however, apply in the case of bays bordered by two or more States as well. Whether the waters of the bay are internal waters or territorial sea would depend on what kind of sovereignty was exercised by the coastal States in the formative period of the historic title to the bay.

167. The same principle also applies to "historic waters" other than "historic bays". These areas would be internal waters or territorial sea according to whether the sovereignty exercised over them in the course of the development of the historic title was sovereignty as over internal waters or sovereignty as over the territorial sea.

F. Question of a list of "historic waters"

168. It is easy to see that claims to "historic waters" may be a source of considerable uncertainty regarding the delimitation of the maritime domain of States. As was shown above, the determination of the question whether or not such a claim is legitimate depends to a large extent on the evaluation of the circumstances in the particular case. Even if general agreement was reached on the principles involved, the application of these principles would not be without complications. The question how to avoid or reduce this uncertainty has held the attention of both authors and Governments, especially in connexion with the attempts to codify the rules of international law regarding the territorial sea.[111]

169. In the course of the preparatory work for the 1930 Hague Codification Conference, Schücking, the rapporteur of the sub-committee dealing with problems connected with the law of the territorial sea, suggested the establishment of an International Waters Office which would register rights possessed by the riparian States outside the proposed fixed zone of their territorial seas, including rights to "historic waters". Applications for registration of such rights could be made within a time limit and application could be opposed by other States within a time limit. A procedure was also provided for settling disputes arising in case of such opposition.[112] The idea of an International Waters Office was however later dropped by the rapporteur.[113]

170. Bustamante in his "project of convention", prepared in order to help the work of the 1930 Codification Conference, suggested a similar scheme, with the Secretariat of the League of Nations playing a role corre-

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[111] See for instance references in Gidel, *op. cit.*, pages 636-638.

[112] League of Nations document C.196.M.70.1927.V, pages 38-41 and 58.

[113] *Ibid.*, page 72.

sponding to that of the International Waters Office in the Schücking proposal.[114]

171. In the discussions at the 1930 Codification Conference, the representative of Greece stated that it would be useful to adopt Schücking's proposal

"that an international organ should be established to draw up in advance a list of historic bays".[115]

172. The representative of Great Britain said:

"May I add one other thing? It is quite clear that neither this Conference nor any Committee nor Sub-Committee of it could possibly undertake to draw up a list of historic bays. Yet the matter is one of great importance, and some machinery ought to be devised by which the various nations of the world can exchange views on this point, with the object ultimately of obtaining a list of historic bays agreed internationally.

"At a later stage, I shall propose that the Conference should suggest, before its work is completed, the setting up of some small body which might examine the claims of the various nations to historic bays with a view to making a report and possibly recommendations on the subject at a later date, to Geneva or elsewhere. The subject is one which has caused much friction and much dispute in the past and this seems to be a golden opportunity first of all to settle the principles on which the classification is to be based, and then, having settled the principles, to agree upon some list which will be binding for the future."[116]

173. Finally the representative of Portugal spoke in the same sense as follows:

"In the considerations it adduced today, the British delegation spoke of the establishment of an international organization. I venture to remind you that article 3 of Professor Schücking's draft speaks of the creation of an International Waters Office. After discussion by the Committee, Professor Schücking agreed to omit that article. I brought it forward again, but it was not taken into account either by the Committee of Experts or by the Preparatory Committee.

"This idea has now been put forward once again. On behalf of the Portuguese delegation, I wish to say that, from the general point of view, I am prepared to agree to the establishment of such an organization, provided that the character and functions with which it is endowed are satisfactory."[117]

174. The Second Committee of the Codification Conference in its report referred to the question of "historic waters" and, as was seen above, stated that the work of codification could not affect such rights. The Committee thereafter added:

"On the other hand, it must be recognized that no definite or concrete results can be obtained without determining and defining those rights. The Committee realizes that, in this matter too, the work of codification will encounter certain difficulties."[118]

175. While it no doubt would be convenient and desirable from the point of view of clarity and certainty to establish an agreed list of "historic waters", it is doubtful whether a practicable approach to the problem would be to ask Governments to register their claims within a certain time and likewise request opponents of the claims to register their objections within a certain time. The advantage would, of course, be, after the expiration of the deadlines, that the unopposed claims would be considered as accepted, that no new claims could be made and that only the opposed claims would have to be settled. One weakness of such a scheme is, however, that it would be binding only on the States adhering to it, so that its effectiveness would depend upon how many and perhaps which States accepted it. Unless adherence by the totality of the States could be achieved, new claims could, in any case, not be excluded. Moreover, the scheme would involve the obvious danger that it might provoke a number of unnecessary disputes, as States would be tempted, in order to be on the safe side, to overstate both their claims and their objections. The net result might be less rather than more certainty.

176. It could therefore be argued that little advantage would be achieved by undertaking the rather formidable task of establishing a list of "historic waters". It might also be said that such an enterprise would be pointless as long as the question of the breadth of the territorial sea has not been settled. Under these circumstances the question is, whether it would not be preferable to limit the study to the principles of the matter and leave particular cases to be settled if and when they become the object of an actual dispute.

G. Settlement of disputes

177. Should a dispute arise, it would, however, be useful if means for the settlement of disputes were already agreed upon. It might therefore be desirable to supplement any agreement on substantive rules or principles relating to "historic waters" by provisions for the settlement of disputes regarding the interpretation or application of such rules or principles. As to the procedure to be followed in regard to such settlement, one might use as a pattern either the machinery set up by the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas[119] or the methods outlined in the Optional Protocols concerning the Compulsory Settlement of Disputes adopted at the 1958 Geneva Conference on the Law of the Sea[120] and at the 1961 Vienna Conference on Diplomatic Intercourse and Immunities.[121]

178. In the former case, disputes would be referred to a special commission, unless the parties agreed to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations. The members of the commission would be named by agreement between the States in dispute or, failing agreement, by the Secretary-General of the United Nations.

179. If on the other hand the pattern of the optional protocols is followed, disputes would be brought before the International Court of Justice by the application of one of the parties. The parties could agree to resort to an arbitral tribunal instead of the Court, and they could also agree to adopt a conciliation procedure before going to the Court.

180. The settlement of disputes regarding rights to "historic waters" is complicated by a peculiar difficulty. If the final decision in a dispute goes against the State claiming the area, it might be expected that the State would give up its claim and the matter would be settled once and for all. On the other hand, should the decision be in favour of the State claiming the area, this decision would bind only the other party to the dispute, and other States might later return to the charge and open up new disputes regarding the claim. The same could of course happen when the claiming State loses, if that State, while respecting the decision in its relations with the other party to the dispute continued to exercise sovereignty over the area in relation to other States or their citizens. In other words, although a dispute regarding an area of "historic waters" was finally settled between the State claiming the area and an opposing State, the matter whether this area is "historic waters" could be reopened by other States, which would not be bound by the first settlement. Even if the dispute was decided by the highest international court in existence, the International Court of Justice, its decision would be binding only on the parties to the dispute, as stipulated in Article 59 of its Statute. A third State would still be legally free to dispute the claim, and a final decision of the question whether an area is or is not "historic waters" would therefore be hard to obtain. Naturally, if in one dispute it decided that the area was "historic waters" of a certain State, the International Court of Justice in all probability would come to the same conclusion in another dispute; similarly, a decision by a special commission or an arbitral decision on the matter in one case would probably carry considerable weight in another case. Still, the question would not be legally settled once and for all, and the possibility of new disputes would remain.

181. The experience of the two above-mentioned conferences indicates that it would probably be practical to embody the provisions for the settlement of disputes in a separate optional protocol. Some States might be willing to accept certain substantive rules or principles on "historic waters", but not to submit themselves to a compulsory procedure for the settlement of disputes. By including the substantive and the procedural rules in separate instruments, these States would be able to adhere to the former although they could not subscribe to the latter.

III. Conclusions

182. The above discussion of the principles and rules of international law relating to "historic waters, including historic bays" would seem to justify a number of conclusions, provided that it is understood that some of these must necessarily be highly tentative and more in the nature of bases of discussion than results of an exhaustive investigation of the matter.

183. In the first place, while "historic bays" present the classic example of historic title to maritime areas, there seems to be no doubt that, in principle, a historic title may exist also to other waters than bays, such as straits or archipelagos, or in general to all those waters which can form part of the maritime domain of a State.

184. On the other hand, the widely held opinion that the régime of "historic waters" constitutes an exception to the general rules of international law regarding the delimitation of the maritime domain of the State is debatable. The realistic view would seem to be not to relate "historic waters" to such rules as an exception or not an exception, but to consider the title to "historic waters" independently, on its own merits. As a consequence one should avoid, in discussing the theory of "historic waters", to base any proposed principles or rules on the alleged exceptional character of such waters.

185. In determining whether or not a title to "historic waters" exists, there are three factors which have to be taken into consideration, namely,

(i) The authority exercised over the area by the State claiming it as "historic waters";

(ii) The continuity of such exercise of authority;

(iii) The attitude of foreign States.

186. First, effective exercise of sovereignty over the area by the claiming State is a necessary requirement for title to the area as "historic waters" of that State. Secondly, such exercise of sovereignty must have continued during a considerable time so as to have developed into a usage. Thirdly, the attitude of foreign States to the activities of the claiming State in the area must have been such that it can be characterized as an attitude of general toleration. In this respect the same weight need not be given to the attitude of all States. Particularly, it would seem reasonable, in the case of a State (or States) claiming historic title to waters bordered by two or more States, to accord special importance to the attitude of the other riparian State (or States).

187. It is apparent from this description of the requirements which must be fulfilled for a title to "historic waters" to emerge, that the existence of such a title is to a large extent a matter of judgement. A large element of appreciation seems unavoidable in this matter, but it is possible that Government comments on the three factors listed above could yield a number of concrete examples which might serve as illustration and guidance.

188. The burden of proof of title to "historic waters" is on the State claiming such title, in the sense that, if the State is unable to prove to the satisfaction of whoever has to decide the matter that the requirements necessary for the title have been fulfilled, its claim to the title will be disallowed. In a dispute both parties will most probably allege facts in support of their respective contentions, and in accordance with general procedural rules each party has the burden of proof with respect to the facts on which he relies. It is therefore doubtful whether the general statement that the burden of proof is on the State claiming title to "historic waters", although widely accepted, is really useful as a definite criterion.

189. The legal status of "historic waters", i.e., the question whether they are to be considered as internal waters or as part of the territorial sea, would in principle depend on whether the sovereignty exercised in the particular case over the area by the claiming State and forming a basis for the claim, was sovereignty as over internal waters or sovereignty as over the territorial sea. It seems logical that the sovereignty to be acquired should be commensurate with the sovereignty actually exercised.

190. The idea of establishing a definitive list of "historic waters" in order to diminish the uncertainty which claims to such waters might cause has serious

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[114] The relevant provisions of the Bustamante procedure may be found in the Secretariat memorandum on "historic waters", paragraph 209.

[115] *Acts of the Conference for the Codification of International Law*, vol. III, page 105.

[116] *Ibid.*, pages 104-105.

[117] *Ibid.*, page 107.

[118] *Ibid.*, page 211.

[119] *United Nations Conference on the Law of the Sea, Official Records*, United Nations publication, Sales No.: 58.V.4, vol. II, page 140.

[120] *Ibid.*, page 145.

[121] Document A/CONF.20/12, in *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, United Nations publication, Sales No.: 62.X.1, vol. II, page 89.

drawbacks. An attempt to establish such a list might induce States to overstate both their claims and their opposition to the claims of other States, and so give rise to unnecessary disputes. Moreover, it would in any case be extremely difficult, not to say impossible, to arrive at a list which would be really final.

191. On the other hand, it would be desirable to establish a procedure for the obligatory settlement of disputes regarding claims to "historic waters". As a pattern for such a procedure one might use the relevant provisions of the 1958 Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas; in that case disputes would be referred to a special commission, unless the parties agreed on another method of peaceful settlement. Or one could follow the optional protocols adopted at the 1958 Geneva Conference on the Law of the Sea and the 1961 Vienna Conference on Diplomatic Intercourse and Immunities; disputes would then lie within the compulsory jurisdiction of the International Court of Justice, subject to the possibility of having recourse also to a conciliation procedure or to arbitration.

192. For practical reasons, an agreement on the settlement of disputes might preferably be included in a protocol separate from any instrument containing substantive rules on "historic waters". In that way, States which would be unwilling to subscribe to a procedure for the compulsory settlement of disputes could adhere to the substantive rules agreed upon.

PX 58

L/SFP:RTYingling

"Status of Cook Inlet"

In reply refer to
L/SFP

MAY 3 1962

Dear Mr. Barry:

Your letter of April 17, 1962 states that you have been informed that the State of Alaska intends to offer for sale oil and gas leases in portions of the Cook Inlet, and that while the exact areas are not known, it is understood that they lie more that three miles seaward of the line joining the East and West Forelands and are more than three miles from shore. You add that in the circumstances the question has arisen whether the areas intended to be leased are State owned under the Submerged Lands Act (43 USC 1301-1315) or whether they lie beneath the high seas and are consequently subject to Federal leasing under the Outer Continental Shelf Lands Act (43 USC 1331-1343).

Your letter states further that in 1961 a comparable question arose with respect to certain areas lying landward of a line joining the East and West Forelands and that the Attorney General of Alaska submitted an opinion, No. 25, of November 30, 1961, in support of Alaska's claim to lease those areas. In that opinion, a copy of which was enclosed with your letter, the position was taken that the area of Cook Inlet landward of the line joining the East and West Forelands is a bay under customary rules of international law and, furthermore, that the whole of Cook Inlet is an historic bay and, consequently, inland waters of Alaska. It appears from a copy of the Secretary of Interior's letter of December 12, 1961 to the Governor of Alaska, also enclosed with your letter, that he recognized Alaska's claim to the area inside the Forelands but that the question of Cook Inlet's status as an historic bay was left for future resolution.

Finally, your letter states that Alaska intends to publish notice of the sale of leases in the areas now in question about May 15, and you request the Department's views and any relevant information to assist you in making a decision.

That

The Honorable
Frank J. Barry,
Office of the Solicitor
Department of the Interior

COPY

Letter from Abram Chayes, The Legal Adviser of the Department of State, to Frank J. Barry, Solicitor of the Department of the Interior, dated May 3, 1962. A copy of this letter was sent to the State of Alaska on January 23, 1969.

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That part of the opinion of the Attorney General of Alaska which relates to the area of Cook Inlet landward of a line joining the East and West Forelands is regarded as basically sound under customary international law. However, in support of Alaska's claim to all of Cook Inlet as an historic bay, the Attorney General cited the case of The Kodiak, 53 F. 126 (1892), and certain commercial fisheries regulations issued in 1939. No comment will be made on the fisheries regulations at this time because these are matters within your special knowledge and in view of what is said hereafter, it is not conceived that they would be decisive.

The case of The Kodiak involved a schooner by that name which was seised by a United States Government vessel and charged with violating the provision of a United States law (R.S. 1956) forbidding the killing of fur-bearing animals within the limits of the territory of Alaska or the waters thereof. The vessel was seized at a point some three or four miles landward of a line drawn across the entrance to Cook Inlet from Cape Douglas to Point Bede and about twenty miles distant from the nearest shore. The distance between Cape Douglas and Point Bede is about forty-seven miles. The jurisdiction of the court was challenged on the ground that the laws of the United States had no force beyond a marine league from the shore line. Although citing some authority which I regard as of dubious applicability the Court did not rest its decision on such authority but apparently on the ground that the orders of the United States Government to the ship which made the seizure must be presumed to have been given in the assertion on the part of the Government of territorial jurisdiction over the waters in question and that such claims of jurisdiction or dominion were of a political nature and binding on the courts.

An extensive search of the records of the Department and of the historic records of the Government in the National Archives has revealed no evidence that the United States has ever at any time claimed the waters of Cook Inlet as internal waters of the United States. In view of this record, the assumption by the Court in The Kodiak case that the arrest indicated that the United States asserted te..itorial jurisdiction over all of Cook Inlet appears to be without substantial basis. It seems likely that the orders of the seizing vessel were in error or were misapplied. Furthermore, the Kodiak was a United States vessel. There is no evidence that R.S. 1956 was ever applied to a foreign vessel in the same area.

Article 7 of the Convention on the Territorial Sea and the Contiguous Zone, which was adopted at the First Law of the Sea Conference at Geneva in 1958, and which was ratified by the President on March 24, 1961, deals with the status of bays, the coasts of which belong to a single State. Paragraph 2 of that article defines a bay and prescribes the semi-circular test. Paragraph 3 describes the method of measurement of the area of the

bay,

bay, and paragraph 4 provides that the closing line of the bay shall not exceed twenty-four miles. Paragraph 5 states that where the distance between the low water marks of the natural entrance points of the bay exceeds twenty-four miles, a straight base line of twenty-four miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length. Although the Convention is not yet in force according to its terms because twenty-two States have not yet ratified or acceded to it, nevertheless, it must be regarded in view of its adoption by a large majority of the States of the world as the best evidence of international law on the subject at the present time. This is particularly so in view of the rejection by the International Court of Justice in the Anglo-Norwegian Fisheries case of the so-called ten-mile rule previously considered as international law by the United States and many other countries. Furthermore, in view of the ratification of the Convention by the President with the advice and consent of the Senate, it must be regarded as having the approval of this Government and as expressive of its present policy.

Representatives of the Department of Justice and of the State of Louisiana who have been endeavoring to reach agreement on a base line along the coast of Louisiana to be used in delimiting the areas of the submerged lands off that coast over which the Federal Government and the State of Louisiana shall respectively exercise jurisdiction have been following the provisions of the Convention referred to above, including the twenty-four mile closing line for bays.

In view of the foregoing, it is my opinion that there is no basis for the assertion by Alaska of a claim to all of Cook Inlet as historic waters. It is my further view that the United States has the right under international law to claim all of Cook Inlet inside of a twenty-four mile closing line as internal waters of the United States. The effect of this in view of the provisions of the Submerged Lands Act and of Section 6(n) of the Alaska Statehood Act (72 Stat. 339, 343) would be to make these waters internal waters of Alaska and to give it title to the resources of the submerged lands under this area and under the three-mile territorial sea measured from the twenty-four mile closing line as the base line.

Sincerely yours,

For the Acting Secretary of State:

Abram Chayes
The Legal Adviser

L:L/SFP:RTYingling:edk 5/2/62

COPY

PX 69

DEPARTMENT OF STATE

Washington, D.C. 20520

July 3, 1969

Mr. Shiro Kashiwa
Assistant Attorney General
Lands and Mineral Resources Division
Department of Justice
Washington, D.C. 20530

re: United States v. State of Alaska
Civil No. A-45-67

Dear Mr. Kashiwa:

In connection with the above litigation you have asked whether the Department of State considers that Cook Inlet is a historic bay or could be considered as such on the basis of criteria used by the United States in determining whether a bay can be considered historic consistently with international law.

On May 3, 1962, by letter from the Legal Adviser, Mr. Abram Chayes, this Department informed the Department of Interior that "an extensive search of the records of the Department and of the historic records of the Government in the National Archives has revealed no evidence that the United States has ever at any time claimed the waters of Cook Inlet as internal waters of the United States," and that it was the opinion of the Legal Adviser "that there is no basis for the assertion by Alaska of a claim to all of Cook Inlet as historic waters." Since May 1962 the United States has not asserted any claim over Cook Inlet as historic waters and has not exercised sovereignty over the area outside the territorial sea measured from the twenty-four (24) mile closing line described in the pre-trial statement for the United States in the above case.

In the study of the United Nations Secretary General entitled "Juridical Regime of Historic Waters, Including

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Historic Bays," A/CN.4/143 (March 9, 1962), three factors are listed that must be considered in determining whether a State has acquired historic title (pp. 37-38):

> (1) the exercise of authority over the area by the State claiming the historic right; (2) the continuity of this exercise of authority; (3) the attitude of foreign States. First, the State must exercise authority over the area in question in order to acquire a historic title to it. Secondly, such exercise of authority must have developed into a usage. More controversial is a third factor, the position which foreign States may have taken towards this exercise of authority. Some writers assert that the acquiescence of other States is required for the emergence of a historic title; others think that absence of opposition by these States is sufficient.

In evaluating claims to historic bays, the Department of State follows these criteria, taking the position with respect to the third that a showing of acquiescence is required. This is reflected in the following statement made by the United States in its note of March 6, 1958, to the Soviet Union regarding Soviet attempts to establish a historic basis for its claim to Peter the Great Bay (38 Dept. of State Bulletin 461):

> "Encroachments on the high seas are of concern to the entire world and neither internal regulations of the Russian Government, which were not communicated to the Governments of other States, nor fishing agreements between the Union of Soviet Socialist Republics and Japan could be sufficient to establish the degree of acceptance on the part of the rest of the world that would be necessary to justify the Government of the Union of Soviet Socialist Republics in claiming that the body of waters referred to above constitutes internal waters

of the Soviet Union either as an historic bay or under any other principle of international law."

In its conduct of United States foreign relations the Department of State does not consider that Cook Inlet is a historic bay. On the basis of the foregoing, it is my opinion that Cook Inlet should not be considered a historic bay.

Sincerely yours,

Leonard C. Meeker

Leonard C. Meeker
The Legal Adviser

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ANCHORAGE, ALASKA 99501

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CERTIFICATE OF SERVICE BY MAIL

UNITED STATES,)
)
v.) Civil No. A-45-67
)
STATE OF ALASKA,)

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the _____ District of Alaska and is a person of such age and discretion as to be competent to serve papers.

That on Sep 20, 1971 he served a copy of the attached

Motion for Substitution of Exhibit
Plaintiff's Response to Defendant's Third Request for Admission dated August 4, 1971

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Anchorage, Alaska.

Addressee(s): Charles K. Cranston
Assistant Attorney General
360 K Street, Suite 105
Anchorage, Alaska 99501

SUBSCRIBED and SWORN to before me this 20 day of Sep 1971

Notary Public
My commission expires 11/6/74

Donna G. Coker

PX 74

Executive Order.

By virtue of the authority vested in me by the Act of Congress entitled, "An Act to give effect to the Convention between the Governments of the United States, Great Britain, Japan and Russia, for the preservation and protection of the fur seals and sea otters which frequent the waters of the North Pacific Ocean, concluded at Washington July 7, 1911," approved August 24, 1912, as well as by virtue of any and all other acts of Congress conferring authority upon me in the premises, I hereby order and direct

1. That the Bureau of Fisheries patrol boats WIDGEON, MURRE, AUKLET, PETREL, EIDER, and KITTIWAKE patrol the waters frequented by the seal herd or herds and sea otter in the protection of which the United States is especially interested.

2. That the masters of these vessels and Edward M. Ball, Assistant Agent, Michael J. O'Conner, Warden, John T. White, Warden, and Howard H. Hungerford, Warden, are hereby designated and authorized to search any vessel of the United States in port or in territorial waters of the United States or on the high seas when suspected of having violated or being about to violate the provisions of the Convention between the Governments of the United States, Great Britain, Japan and Russia, concluded at Washington July 7, 1911, or the said Act of August 24, 1912, or of any regulation made thereunder, and to seize such vessel and the officers and crew thereof and bring them into the most accessible port of the Territory of Alaska or the States of California, Oregon or Washington, for trial.

WARREN G HARDING

THE WHITE HOUSE,
April 9, 1923.

[No. 3816.]

Executive Order

By virtue of the authority vested in me by the Act of Congress entitled, "An Act to give effect to the Convention between the Governments of the United States, Great Britain, Japan and Russia, for the preservation and protection of the fur seals and sea otters which frequent the waters of the North Pacific Ocean, concluded at Washington July 7, 1911," approved August 24, 1912, as well as by virtue of any and all other acts of Congress conferring authority upon me in the premises, I hereby order and direct

1. That the Bureau of Fisheries patrol boats *Widgeon*, *Murre*, *Auklet*, *Petrel*, *Eider*, and *Kittiwake* patrol the waters frequented by the seal herd or herds and sea otter in the protection of which the United States is especially interested.

2. That the masters of these vessels and Dennis Winn, Agent, Edward M. Ball, Assistant Agent, Shirley A. Baker, Assistant Agent, Lemuel G. Wingard, Assistant Agent, Michael J. O'Connor, Warden, William E. Baumann, Warden, and Charles Petry, Warden, are hereby designated and authorized to search any vessel of the United States in port or in territorial waters of the United States or on the high seas when suspected of having violated or being about to violate the provisions of the Convention between the Governments of the United States, Great Britain, Japan and Russia, concluded at Washington July 7, 1911, or the said Act of August 24, 1912, or of any regulation made thereunder, and to seize such vessel and the officers and crew thereof and bring them into the most accessible port of the Territory of Alaska or the States of California, Oregon or Washington, for trial.

CALVIN COOLIDGE

THE WHITE HOUSE,
April 11, 1924.

[No. 3988.]

Executive Order

It being expedient for the enforcement of the act for the protection of the northern Pacific halibut fishery, approved June 7, 1924, that a patrol be maintained in certain waters, and that public vessels be designated for that purpose and officers be designated to enforce said act:

THEREFORE, IT IS HEREBY ORDERED:

1. That a patrol be maintained in the territorial waters of the United States and the high seas, including Bering Sea, extending westerly from the territorial waters of the United States and Canada, to be conducted by any naval or other public vessels on service in such waters and including specifically the following named vessels of the Bureau of Fisheries: *Widgeon*, *Murre*, *Auklet*, *Petrel*, *Eider*, *Kittiwake*. *Blue Wing*, *Merganser*, and *Scoter*.

2. That the masters of such vessels, and the agents, assistant agents, inspectors and wardens of the Bureau of Fisheries are hereby designated as officials to exercise all powers of search and seizure conferred by said act upon persons so designated by the President.

CALVIN COOLIDGE

THE WHITE HOUSE,
November 3, 1924.

[No. 4098]

569-731 O - 75 - 11

Executive Order

It being expedient for the enforcement of the act for the protection of the Northern Pacific halibut fishery, approved June 7, 1924, that a patrol be maintained in certain waters, and that public vessels be designated for that purpose and officers be designated to enforce said act:

THEREFORE, IT IS HEREBY ORDERED:

1. That a patrol be maintained in the territorial waters of the United States and the high seas, including Bering Sea, extending westerly from the territorial waters of the United States and Canada, to be conducted by any naval or other public vessels on service in such waters and including specifically the following named vessels of the Bureau of Fisheries: Widgeon, Murre, Auklet, Petrel, Eider, Kittiwake, Blue Wing, Merganser, Scoter, Brant, Teal, Crane, and Red Wing.

2. That the masters of such vessels, and the agents, assistant agents, inspectors and wardens of the Bureau of Fisheries are hereby designated as officials to exercise all powers of search and seizure conferred by said act upon persons so designated by the President.

CALVIN COOLIDGE

THE WHITE HOUSE,
October 25, 1928.

[No. 4083]

Executive Order

PROTECTION OF THE NORTHERN PACIFIC HALIBUT FISHERY

It being expedient for the enforcement of the act for the protection of the northern Pacific halibut fishery, approved May 2, 1932, that a patrol be maintained in certain waters, and that public vessels be designated for that purpose and officers be designated to enforce said act:

THEREFORE IT IS HEREBY ORDERED:

1. That a patrol be maintained in the territorial waters of the United States and the high seas, including Bering Sea, extending westerly from the territorial waters of the United States and Canada, to be conducted by any naval or other public vessels on service in such waters and including specifically the following-named vessels of the Bureau of Fisheries: Widgeon, Murre, Auklet, Petrel, Eider, Kittiwake, Blue Wing, Merganser, Scoter, Brant, Teal, Crane, Red Wing, and Penguin.

2. That the masters of such vessels, and the agents, assistant agents, inspectors, and wardens of the Bureau of Fisheries are hereby designated as officials to exercise all powers of search and seizure conferred by said act upon persons so designated by the President.

HERBERT HOOVER

THE WHITE HOUSE,
June 3, 1932.

THE WHITE HOUSE,
June 3, 1932.

[No. 5854]

PX 75

COPY

Director, FWS, Washington, D. C. March 31, 1952

Regional Director, FWS, Juneau, Alaska

Application of Federal Fishery Regulations - 3 Mile Limit

Since recent discussions on the Japanese Treaty, there has been considerable speculation in Alaska as to applicability of Federal Fishery Regulations beyond the three mile limit. It is rapidly becoming a matter of real concern to us.

It is my understanding Federal law can be made to apply to our nationals wherever they are on the high seas, at least if they are sailing under the U.S. flag. This seems to be born out in the Florida sponge case, Skiriotes v. Florida, 313 U.S. 69. This decision seems to imply jurisdiction may be claimed by States or the Government. Other decisions, such as U.S. v. California, 332, U.S. 19, and Takahasi v. Commission, 334 U.S. 410, seem to imply dominant Federal control of possibly all ocean fisheries. It even indicates Federal ownership of all marine life and ocean bottom. This would refer, of course, to the Territorial waters and bays that might be considered "historic".

The Alaska Cano Law grants authority for our Agents or designated officers to board and search U.S. vessels on the high seas when there is reason to believe they are in violation of said law.

My question here relates only to U.S. Fishermen on vessels registered under U.S. flag. There is a possibility now of development of a plan by drift gill net boats to attempt to fish lower Cook Inlet without regard to our regulation for that area, on the theory that the regulations do not apply beyond the 3 mile limit. As you are aware, the Inlet is several times 10 miles wide, the maximum distance shore to shore for inclusion of bays as Territorial waters. There is a question whether we could consider Cook Inlet a "historic" bay. We understand Canadian halibut boats have operated within that area under the International Halibut regulations.

The statute prohibiting the landing of the fish taken outside of Alaska would be of little value, since the season would not be closed in all of the ports they could reach, nor all of the time.

We would like to have an opinion and guiding policy on applicability of regulations beyond the 3 mile limit, plus any special instructions, if required, for search, apprehension, custody, and Court action. If our regulations do apply, as I believe they do under above cited cases, is it necessary to include wording in them to that effect?

While it may be a separate matter, I suggest terms of the proposed Japanese Treaty be kept in mind while doing any research on above to see what steps we might take to establish "historic" rights in offshore waters. Perhaps we need some regulations and at least token studies to help establish our exclusive right to some fisheries which have always been strictly U.S. ventures.

CLARENCE J. RHODE

COPY

OFFICE MEMORANDUM • UNITED STATES GOVERNMENT

TO: Regional Director, Juneau DATE: May 1, 1952

FROM: Chief, Branch of Alaska Fisheries

SUBJECT: Application of Alaska fishery laws and regulations beyond the 3-mile limit.

Reference is made to your memorandum of March 31 requesting information concerning the applicability of the Alaska fishery laws and regulations to waters beyond the 3-mile limit. You suggest that, in view of certain court decisions, these laws and regulations might apply to our nationals wherever they are on the high seas and would not necessarily be restricted to Territorial waters.

The Alaska fishery law refers to "the waters of Alaska over which the United States has jurisdiction" and the regulatory areas described and set apart by the regulations, and to which the regulations apply, are described in every instance as including "all Territorial coastal and tributary waters of Alaska." It is the opinion that these laws and regulations apply to fishing in the described areas only and do not apply to fishermen operating elsewhere, even though they may be American citizens on vessels registered under the American flag.

For the purpose of administering the Alaska fishery laws and regulations, it is felt that Territorial waters or "waters of Alaska over which the United States has jurisdiction" is limited to the waters extending for a distance of 3 miles off shore and to all waters within the headlands of bays, straits, and inlets. Admittedly, there may be some difficulty with respect to defining the offshore waters in such places as Bristol Bay, lower Cook Inlet, or lower Clarence Strait, where the distance from headland to headland is more than 10 miles. For all practical purposes, however, it is felt that American citizens fishing in Alaskan waters can be held to observe the Alaska fishery laws and regulations. If situations develop wherein there is an extensive offshore fishery, new legislation undoubtedly will be necessary to cope with it.

(SIGNED) SETON H. THOMPSON
Seton H. Thompson, Chief
Branch of Alaska Fisheries

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FWS, Washington, D.C. DATE: December 11, 1952

FROM : Regional Director, FWS, Juneau, Alaska

SUBJECT: Determination of Seaward Boundaries of Alaska

In wire of even date we called your attention to the hearings of the Engle Subcommittee scheduled for next week as part of its investigation and study to determine the proper criteria for fixing the seaward boundaries of the United States and the Territory of Alaska. This investigation was authorized by H.R. 676 introduced by Congressman Yorty. It occurred to us that someone in the Washington office might consider it worthwhile to look in on this hearing for the purpose of deciding upon the propriety of introducing testimony relative to problems of Alaska fishery conservation in extra-territorial waters. Questions on this subject recur with increasing frequency, and several recent incidents have been threatened, although they never actually materialized. Branch of Alaska Fisheries is familiar with the contention of some operators of mobile gear, especially trollers, that no observance of the commercial fishery regulations is required outside the three-mile limit.

Latest correspondence with the Central office on this subject is Seton Thompson's memorandum of May 1, 1952, in which he states the opinion that the commercial fishing regulations may be applied only within territorial waters, which he interprets as extending for a distance of three miles offshore. Enclosed are two copies of an article entitled, "The Three-Mile Limit," by Lcdr. Emory C. Smith, U.S. Navy, which appeared in the JAG JOURNAL, a publication devoted to legal matters and Judge Advocate General decisions of interest to the military. Principal emphasis of Commander Smith's article is between the absolute sovereignty which a State may maintain over waters within three miles of its coast as contrasted to jurisdiction or control, which may be exercized over more extended but contiguous areas of peculiar interest to the state, such as its fisheries. The Hague decision in the recent fishery controversy between England and Norway accepts the promise that a nation may exercise control in specific matters which within the bounds of reasonableness are peculiar to its own welfare and interest. It is our hope that the gradual evolution of State Department policy and international law will eventually establish the authority of the United States to protect and manage domestic stocks of fish which range beyond the narrow confines of territorial waters.

Authority over the high seas salmon fishery will probably be achieved through the workings of the Japan-Canada-United States North Pacific Fishery Treaty, which should surely provide that the signatory nations may control their own nationals anywhere within the treaty area.

BEST COPY AVAILABLE

In the meantime, however, it may be well worth while to keep track of the Engle Subcommittee activities and to make sure that the record of its proceedings takes full cognizance of fishery protection problems in the North Pacific and the Bering Sea.

CLARENCE J. RHODE
Regional Director

Attachment

THE THREE-MILE LIMIT--I

By Ledr. Emory C. Smith, U.S.N.

The development of weapons of modern warfare has caused many students of international affairs to wonder whether or not the 3-mile limit of territorial waters affords sufficient protection to the United States.

This is the first of two articles discussing a brief history of the 3-mile limit, and what appear to be exceptions to the American doctrine which recognizes the 3-mile limit as a rule of international law. The second article, which will appear in an early issue of the JAG JOURNAL, will discuss the right of self-defense beyond the 3-mile limit as well as recent developments pertaining to the control of the air space reservations.

Few topics have provoked more controversy or elicited more divergent views and opinions than that of the extent of territorial waters. The practice of nations viewed over a period of 200 years ranges from one extreme to the other. It is possible to take any of several positions relative to the extent of a territorial sea or relative to the nature of the jurisdiction therein, and to support each by the authority of text writers and numerous illustrations drawn from international events, ancient and modern. It is felt that the greater part of the disagreement as to the extent of territorial waters is basically due to the concept of jurisdiction. Having recognized this reason for the disagreement we may make a useful distinction between claims to territorial waters and claims of jurisdiction or control upon the high seas, to explain the apparent disagreements pertaining to the question.

This idea is corroborated by Prof. Hyde in his treatise on International Law, who states in substance that there is a real distinction between a right of sovereignty over a particular area and a right to exercise a preventive or protective jurisdiction over or within an area that is outside of the national domain. This basic distinction between sovereignty and preventive or protective jurisdiction must be kept firmly in mind in order to rationalize the varying degrees of authority which a nation may exercise over the sea.

To discuss at any length the 3-mile limit would be an academic, time-consuming and unnecessary discourse. Suffice

it to say, however, that there exists a preponderance of opinion among the authorities that the 3-mile limit for the marginal sea stands today as a rule of international law. Furthermore, the authorities are practically unanimous in the opinion that within 3 miles of the coast a State may, under international law, exercise any jurisdiction and do any act which it may lawfully do upon its own land territory. In short, a State has sovereignty over waters lying within 3 miles of its coast. While there are some nations which claim jurisdiction over waters more than 3 miles from its coast, the United States has long been a champion of the 3-mile limit.

The first view of our Government as to the territorial limits at sea seems to have been made in a report of a congressional committee, submitted on January 8, 1782 relative to the right of American fisherman to ply their trade, particularly off the Newfoundland banks, to the effect that our Nation did not claim the right of fishing within three leagues of the British shores. On November 8, 1793, Secretary of State Jefferson informed the British and French ministers that "the ultimate extent" of the marginal sea was reserved "for further deliberations." However, Mr. Jefferson went on to state that the President had instructed American officials to restrain the enforcement of their orders "for the present to the distance of one sea league or three geographical miles from the sea shores." This measure was adopted by Congress in the following year when it gave the district courts "cognizance of complaints, by whomsoever instituted, in the cases of captures made within the waters of the United States or within a marine league of the coasts or shores thereof" (sec. 6, Act of June 5, 1794, 1 Stat. 384).

From time to time the United States has reasserted its adherence to the 3-mile limit in various diplomatic notes, court opinions, and by its actions. The Navy War Code of 1900, Art. II, declares: "The territorial waters of a State extend seaward to the distance of a marine league from the lowest water mark of its coast line." And finally, the United States Supreme Court seems to fix American jurisprudence in support of the 3-mile limit in the case of Cunard S.S. Co., et al. v. Mellon (43 S. Ct. 504 (1923)).

While the United States has for nearly 150 years recognized the 3-mile limit and has followed the doctrine of "freedom of the seas," there are notable exceptions which, at first blush, would indicate an inconsistency of position. However, it is reiterated for the sake of emphasis that the rule of international law which recognizes the 3-mile limit as the boundary of that part of the sea which constitutes part of the territory of the littoral State is not inconsistent with the claim to a more extended control on the high seas. As a matter of further emphasis, it is pointed out that the 3-mile zone is in reality "a territorial" sea, coming fully under the domain or sovereignty of the adjoining State.

Perhaps the first apparent departure which our country took from the 3--mile limit principle was when it followed the British lead by passing the Act of March 2, 1799. The Act provided that every ship "bound to any port or place in the United States" might be boarded within four leagues of the American coast, examined, searched, and compelled to show a manifest. It is to be noted that the law had application only to ships which were bound to the United States. The principle of the Act of March 2, 1799, was incidentally considered by the Supreme Court in several cases. The first of these cases was that of Church v. Hubbart, (1804), 2 Cranch 187, in which Chief Justice Marshall, speaking for a unanimous court ruled that a nation might lawfully take steps upon the high seas to protect itself and secure its laws from violation, provided the measures employed satisfy the test of reasonableness.

The Treaty of Guadalupe Hidalgo between the United States and Mexico in 1848 represents another apparent departure from the 3--mile limit principle. The British protest to Art. V of the treaty on the grounds that it extended the 3-mile limit was satisfied when our Government informed the British Government that the treaty only affected the United States and Mexico, and in no way infringed on the rights, under international law, of any other nation.

Another seeming inconsistency in the position of the United States with reference to the 3-mile limit principle occurred during the years 1886-89 in the seizure of certain British sealing schooners in the Bering Sea by U.S. revenue cutters against which the British Government protested.

The matter was settled by arbitration on February 29, 1892. The arbitrators decided that the United States had no right of protection or property in fur seals frequenting the islands of the United States in the Bering Sea when such seals were found outside the ordinary 3-mile-limit. A later treaty, however, was entered into between the United States, Great Britain, Russia, and Japan which prohibited the contracting powers from engaging in sealing in the open seas of the North Pacific Ocean within certain defined areas.

Perhaps the most notable of all "inconsistencies" of this Government with reference to the principle of the 3--mile limit occurred in 1922 when the United States and Great Britain entered into a treaty designed to permit the former to effectively combat the liquor smuggling industry outside the 3-mile limit off the coast of the United States.

As late as December 11, 1941, the President of the United States, by Executive Order, defined for purposes of international defense "defensive sea areas" which extended outside the territorial waters of the United States.

In all of these apparent inconsistencies, it can be seen that the United States was in no way attempting to exercise the same incidents of sovereignty over the high seas which it exercises with respect to its territorial waters within the 3-mile limit. The purpose in each case was limited and specific, and involved only the exercise of a control--in contradistinction to the exercise of a sovereignty--over the waters contiguous to the boundary of the 3--mile limit. In the four instances cited above, the United States has exercised a control outside the 3--mile limit for the purpose of regulating fishing, for enforcement of customs laws and for purposes of self-defense. In every instance set out above, this exercise of control outside the 3--mile limit for the purposes enumerated has been pursuant to treaty with other powers with one notable exception, and that, for the purpose of self-defense.

In addition to the above there have occurred within the past 3 years still other apparent inconsistencies in the United States position with respect to the 3-mile limit. On September 28, 1945, the President of the United States issued two proclamations, the first of which, Proclamation No. 2667, declared as a matter of policy that the natural resources of the subsoil and sea bed of the continental

shelf appertain to the United States, subject to its jurisdiction and control. Simultaneously the President of the United States issued Proclamation No. 2668, which asserted the right of the United States to establish fishery conservation zones in areas of the high seas contiguous to the coasts of the United States, either unilaterally or in concert with other interested States; the character of the waters as high seas and the right to free navigation were declared to remain unaffected.

The concept of asserting jurisdiction over the subsoil and sea bed of the continental shelf, while not new, is of comparatively recent inception. As early as 1916 a Spanish expert, concerned over the depletion of fisheries, urged that territorial waters be extended to include the whole continental shelf, where the important food species chiefly flourished. Similar recognition of the importance of the shelf with respect to fisheries was being voiced simultaneously by Argentine writers who emphasized the need for adequate control. This concern was reiterated some years later in the League of Nations Committee of Experts for the Progressive Codification of International Law.

In quite another connection, the year 1916 also saw the assertion by the Russian Imperial Government of a claim to certain uninhabited islands north of Siberia on the ground that they formed "the northern constitution of the Siberian continental shelf"--an assertion repeated by the Soviet Government in 1924. Also of significance as a precedent, although it did not refer in terms to the the continental shelf, was the treaty of February 26, 1942, between Venezuela and the United Kingdom, undertaking to dispose of the submarine areas of the Gulf of Paria. By the agreement each State undertook to recognize "any rights of sovereignty or control which have been or may hereafter be lawfully acquired" by the other over submarine areas on their respective sides of an arbitrary boundary line. "Submarine areas" were defined as "the sea bed and the subsoil outside of the territorial waters of the High Contracting Parties."

Soon after the proclamation of the President of the United States asserting jurisdiction and control over the continental shelf adjacent to the United States, several Latin American countries asserted sovereignty over the continental shelf contiguous to their land areas. Among these nations were Mexico, Argentina, Peru, Costa Rica, and Cuba. Costa Rica put forth a claim to the continental shelf on both Atlantic and Pacific coasts of Costa Rica, out to a limit of 200 miles offshore regardless of the depth of water.

As to the proclamation of the President of the United States (No. 2667), no claim on behalf of our country to "sovereignty," "title," or "ownership" of the continental shelf was asserted. However, a summary of the actions of the Latin American States indicates that, while all have relied for support on the United States proclamation of 1945, they have gone considerably beyond their prototype in at least two respects: (1) they undertake to effect a categorical extension of sovereignty over the continental shelf and sea bed; and (2) they propound a further claim to the waters which cover the continental shelf.

It is noted in the Proclamation of the President of the United States (No. 2668) asserting the right of the United States to establish fishery conservation zones in areas of the high seas contiguous to the coasts of the United States no reference was made to the continental shelf. The claim proceeded on a general theory of the right of a coastal State to protect its contiguous fisheries; the zone concept doubtless was derived from the customs enforcement areas authorized by the Anti-Smuggling Act of August 5, 1935 (49 Stat. 514). However, the Latin American States have sought in their actions to achieve both objectives through a single comprehensive claim to the continental shelf and to the waters over it.

This assertion of sovereignty by the Latin American countries goes beyond anything put forward in either of the United States proclamations. It presumably implies, for example, sovereignty in the air space over the claimed areas--a question of the first importance, for, as will be shown in the succeeding article, there is no right of innocent passage by air. Even on the surface, though rights of free navigation be recognized in such a claim, there is in the claim itself an infringement, in principle at least, of traditional views on the character of the high seas.

The foregoing has sought to give a résumé of the exceptions or apparent inconsistencies of the American position with reference to the 3--mile limit. In view of the present American position it is concluded that there can be no legal extension of the territorial waters of the United States or its possessions beyond the 3-mile limit. To make any unilateral extension of the territorial waters of the United States would be, in effect, to pursue a course directly contrary to the preponderance of international law, and would amount to an abandonment of the time-honored United States position with reference to the freedom of the seas which has been zealously maintained since the early days of the republic.

13/1

Mr. Chaney

Miss [illegible] (Chief Counsel's Office)

Please note & return.

I assume you are alert to this situation. Jess.

THE THREE-MILE LIMIT--II

By Lcdr. Emory C. Smith, U.S.N.

This is the second and concluding article treating the question of whether or not the 3-mile limit of territorial waters affords sufficient protection to the United States.

The first article appeared in the March 1949 issue of the JAG JOURNAL, and discussed the history of the 3-mile limit and its apparent exceptions. This article undertakes a discussion of the right of self-defense beyond the 3-mile limit.

A treatment of the analogous problem relating to the control of the air space reservations from the standpoint of national defense will appear in an early issue of the JAG JOURNAL.

Under the broad principle of self-defense, international law recognizes that any nation may take reasonable measures to protect its national security and right of privacy, even though the measures employed take place on the high seas beyond the 3--mile limit of territorial waters. It is important to note that a State may endeavor to prevent, in times of peace or war, the commission of certain acts by foreign ships, at a distance of more than three marine miles from its coast without claiming that the place where they occur is a part of its domain. This is true in the case of so--called hovering laws, designed to prevent smuggling by interference outside of territorial waters with foreign vessels about to enter them for an illegal purpose.

When such defensive measures of prevention are applied to foreign shipping, justification rests generally upon the causal connection between the acts sought to be thwarted and the injury otherwise to be anticipated from them by the aggrieved State within its own territory. As that connection may be found to exist at varying distances from the outer limits of territorial waters, the freedom of such a State is not, on principle, dependent upon the precise location of the spot where an offender may be apprehended, or upon the possession by the State of a special right of control over that spot.

Other instances of the applicability of the same principle occur when a neutral State seeks to check the commission of belligerent acts within dangerous proximity

of its shores although outside of the marginal sea; or when a belligerent power undertakes to establish a defensive area within waters outside of, but adjacent to, that sea. Such steps, although taken with a view to safeguarding the national domain, even when confined to specific areas, are not necessarily indicative of the breadth of the maritime belt belonging to the State that has recourse to them, or of assertions of sovereignty over the waters where they are applied.

Although without a sovereign, the high seas are, nevertheless, often the scene of activities in which a State asserts the right to check or forbid the commission of a particular act. Yet that assertion does not necessarily or commonly purport to be a manifestation of dominion over waters, or of a control over them, but rather an interference with acts sought to be committed thereon.

In a word, the 3-mile limit of the marginal sea will last only as long as that limit does not prevent a coastal State from doing whatever it may really need to do on the high sea for the maintenance and defense of its normal life. (See Hyde's International Law, vol. I, pp. 460-461.)

There have been numerous occasions on which our government has officially expressed its position with reference to the exercise of limited control on the high seas on the ground of self-defense. A noteworthy statement of this Government's position was made by Secretary of State Hughes in a letter to Senator Sterling on August 16, 1922, wherein the following appeared:

"It has been suggested that the seizure of vessels on the high seas for the purpose of preventing smuggling might be justified under the so--called right of self-preservation. This right on the part of a nation, says Mr. Hershey in his work on international law, includes 'the right to preserve the integrity and inviolability of its territory with the corresponding duty of respecting that of other states.' * * * In order to maintain that right a nation may, say the authorities, in extreme cases commit what would ordinarily be an infraction of the law of nations and violate the territorial sovereignty or the international right of another state. * * * Operations of this kind are described by Halleck as 'imperfect war.' From an examination of instances in which this principle of self-preservation has been invoked, it would appear that they are limited to efforts to thwart acts of a military character."

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Another expression of this Government's position is found in the Fur Seal Arbitration of 1893 with Great Britain when Mr. Phelps for the United States asserted the right of a nation to enforce its laws beyond the marginal sea, "if they are reasonable and necessary for the defense of a national interest or right." He stated that in such cases other States would acquiesce, but if they did not, the littoral State might enforce such laws at its discretion. To this Sir Charles Russell replied, that if the enforcement were reasonable other States would acquiesce, but that by international law such enforcement could not be claimed as a right against an objecting nation. There seems, however, to be some evidence of acquiescence in reasonable claims to warrant the assertion that a customary rule of international law has grown up under which such acts may be held legal if they meet the test of reasonableness.

The American position finds support among many of the authorities on the subject. The distinguished French writer, Fauchile, has written that "a state incontestably has the right to take all measures designed to guaranty its existence against the dangers which menace it." An English jurist of equal authority believes that "there are circumstances falling short of occasions upon which existence is immediately in question, in which through a sort of extension of the idea of self--preservation to include self-protection against serious hurt, States are allowed to disregard certain ordinary rules of law in the same manner as if their existence were involved." (Hall, International Law, 7th Ed., 1917, p. 278.)

Of interest in this same connection is the case of the Kearsarge. In 1864 the Confederate cruiser, Alabama, was in the harbor of Cherbourg, France. The Federal ship of war, Kearsarge, stood off the harbor entrance prepared to give battle. The French Government insisted that the engagement should take place far enough outside the 3-mile limit to obviate possible danger to the shore. Secretary of State Seward instructed Mr. Dayton, American Minister to France, "that the United States did not admit a right of France to interfere with their ships-of-war at any distance exceeding 3 miles." However, our Government reversed itself, and adopted the French view in 1886 when Secretary of State Bayard wrote to the Secretary of the Treasury as follows:

"And during our various fishery negotiations with Great Britain we have insisted that beyond the 3-mile line British territorial waters on the northeastern coast do not extend.

Such was our position in 1783, in 1794, in 1815, in 1818. Such is our position now in our pending controversy with Great Britain on this important issue. It is true that there are qualifications to this rule, but these qualifications do not affect its application to the fisheries. We do not, in asserting this claim, deny the free right of vessels of other nations to pass on peaceful errands through this zone, provided they do not, by loitering produce uneasiness on the shore or raise a suspicion of smuggling. Nor do we hereby waive the right of the sovereign of the shore to require that armed vessels, whose projectiles if used for practice or warfare, might strike the shore, should move beyond cannon range of the shore when engaged in artillery practice or in battle as was insisted on by the French Government at the time of the fight between the Kearsarge and the Alabama, in 1864, off the harbor of Cherbourg. We claim, also, that the sovereign of the shore has the right, on the principle of self-defense, to pursue and punish marauders on the sea to the very extent to which their guns would carry their shot, and that such sovereign has jurisdiction over crimes committed by them through such shot, although at the time of the shooting they were beyond 3 miles from shore."

These same principles have been recognized in American courts, the most renowned opinion being that handed down by the Supreme Court of Louisiana in the case of Cucullu v. Louisiana Insurance Company, 16 American Decisions 199 where it was held in part:

"Strictly speaking, the authority of a nation cannot extend beyond her own territory. By the common consent of nations this authority has been enlarged, where the sea is the boundary, to the distance of a cannon shot from the shore. Within these limits foreigners are protected, and prizes cannot rightfully be made of their vessels by enemies. But the right of the nation to protect itself from injury, by preventing its laws from being evaded, is not restrained to this boundary. It may watch its coasts and seize ships that are approaching it with an intention to violate its laws. It is not obliged to wait until the offense is consummated before it can act. It may guard against injury, as well as punish it. If indeed, in the exercise of this right, an unreasonable range was taken, other nations might object. But so long as it is confined to the seizure of vessels entering the port for which they were destined, it will not, it is presumed from a just ground of complaint. Our own legislation authorizes revenue

cutters to visit vessels four leagues from the coast; and the acts of Congress on this subject are a clear expression of the opinion of our government, that nothing in the law of nations prohibited them to confer such power on its cruisers."

This same rule finds support in the case of United States v. Bencouchea, C.C.A., 279 Fed. 537.

During recent years the most common method of exercising limited control over areas of the high seas contiguous to the territorial waters of a nation has been by the establishment of "zones" and "defensive sea areas." The President of the United States is authorized by statute to promulgate orders for the establishment of defensive sea areas for purposes of national defense. (18 U.S.C. 96.)

As shown above defensive sea areas, unlike war zones, are based upon the right of a State to exercise jurisdiction for specific purposes, such as defense, revenue, etc., over waters adjacent to its coast. These areas are, consequently, established near the home shore instead of near the shores of other nations. Only two nations, acting individually, the United States and Japan, have employed defense areas. However, the twenty--one American Republics approved on October 3, 1939, the Declaration of Panama. This defined a zone of waters extending approximately 300 miles to seaward around the North and South American continents, excluding Canada, for the purpose of self-protection. It prohibited the commission of hostile acts by any non-American belligerent nation within the zone. As yet, the right of establishing such defense areas has not been questioned. On April 5, 1917, President Wilson established 29 defensive sea areas; 1 other was established later. On December 11, 1941, President Roosevelt established 8 defensive sea areas, and by the end of 1943 well over 40 defensive sea areas had been established. The greatest extension beyond the 3--mile limit for defensive purposes was in the southeastern Alaska Maritime Control Area where the area extended about 53 miles beyond the 3-mile limit.

It is believed pertinent to observe here that in practice the President of the United States has established defensive sea areas only in wartime or during national emergencies. However, he is not limited by provisions of the statute and may, therefore, establish defensive sea areas in peacetime as well as in wartime. In view of the

proposition that a State may take reasonable steps to protect its security on the high seas contiguous to its territorial waters, it is concluded as a matter of international law that such steps may be taken in time of peace without the establishment of a defensive sea area covering such waters. However, the test of reasonableness must always be met to justify any measure taken to protect the security of our nation.

Two questions must be answered before any measures may be taken on the high seas in the interest of national security. The first question to be decided is, "What constitutes a threat to the national security?" Secondly, once it is decided that the nation's security is threatened, "What measures can we take to thwart such a threat?" While certain examples can be given to illustrate the problems, no hard and fast rule can be set down as applying to all situations. International law merely recognizes that there must be a threat to the national security and the measures taken to repel the threat must be reasonable.

A noteworthy peacetime example is found in President Roosevelt's "Freedom of the Seas" fireside chat of September 11, 1941. At the time of this address the United States was a nation constructively at peace with all other nations, although in a state of unlimited emergency (55 Stat. 1647). However, the German Government was responsible for the sinking of various American ships. Among other statements in the address, President Roosevelt declared, "Their (German submarines) very presence in any waters which America deems vital to its defense constitutes an attack." In another place the President stated, "* * * when you see a rattlesnake poised to strike, you do not wait until he has struck before you crush him." Mr. Roosevelt continued by stating, "This situation is not new. The second President of the United States, John Adams, ordered the United States Navy to clean out European privateers and European ships of war which were infesting the Caribbean and South American waters, destroying American commerce. The third President of the United States, Thomas Jefferson, ordered the United States Navy to end the attacks being made upon American and other ships by the corsairs of the nations of North Africa. * * * It is no act of war on our part when we decide to protect the seas that are vital to American defense. The aggression is not ours. Ours is solely defense. * * * From now on, if German or Italian vessels of war enter the waters the protection of which is necessary for American defense, they do so at their own peril."

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At the time of the President's speech, our ships were actually being sunk on the high seas--the same situation that existed during the time of Adams and Jefferson. Thus we have the so--called threat to our national security. The step taken to repel this "threat" was a "sink on sight order." Such step was not considered unreasonable at the time due to the conflagration existing in Europe, our state of unlimited national emergency, and the violent acts committed against our shipping.

The case of the Kearsarge and Alabama related above is another example illustrating the point that reasonable steps may be taken on the high seas to protect the national security of a nation. Eventually, a French vessel of war escorted the Confederate vessel, Alabama, out of the French port to an area a few miles beyond the 3-mile limit, to engage the Kearsarge. In this instance the threat to the national security of France lay in the possibility of damage to shore installations which a naval battle just outside the 3-mile limit might cause. The measure taken, of escorting the Alabama to a position outside cannon range of the shore, even though it was well outside the territorial waters of France, was considered a reasonable measure under international law.

Even merchant vessels hovering off our coasts just outside the 3-mile limit have been considered sufficiently inimical to our national interests to warrant the passage of the Hovering Vessel Act, which provides:

"The term 'hovering vessel' means any vessel which is found or kept off the coast of the United States within or <u>without</u> the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue" (46 Stat. 708). (Italics supplied.)

By the provisions of this Act certain tests are laid down to determine whether or not such a vessel constitutes a threat to our national interest. The elements considered are the history, conduct, character and location of the vessel. Note, too, that the test of "reasonableness" is employed. Measures taken in such cases include seizure of the vessel and criminal prosecution of the ones responsible for the forbidden actions. It is obvious, however, that

the actions of a foreign vessel of war would have to be particularly flagrant to warrant, as a reasonable step, a visit and search of the offending vessel, or more extreme measures in time of peace.

From the discussions in both articles it is concluded that since international law permits a nation to employ reasonable defensive measures beyond the limits of its territorial waters, the 3-mile limit is not outmoded as a rule of international law by the development of weapons of modern warfare.

From the JAG JOURNAL, March 1949, pp. 4--7, and April 1949, pp. 4-7.

Director, FWS, Washington, D.C. December 11, 1952

Regional Director, FWS, Juneau, Alaska

Determination of Seaward Boundaries of Alaska

In wire of even date we called your attention to the hearings of the Eagle Subcommittee scheduled for next week as part of its investigation and study to determine the proper criteria for fixing the seaward boundaries of the United States and the Territory of Alaska. This investigation was authorized by H.R. 676 introduced by Congressman Yorty. It occurred to us that persons in the Washington office might consider it worthwhile to look in on this hearing for the purpose of deciding upon the propriety of introducing testimony relative to problems of Alaska fishery conservation in extra-territorial waters. Questions on this subject recur with increasing frequency, and several recent incidents have been threatened, although they never actually materialized. Branch of Alaska Fisheries is familiar with the contention of some operators of mobile gear, especially trawlers, that no observance of the commercial fishery regulations is required outside the three-mile limit.

Latest correspondence with the Central office on this subject is Seton Thompson's memorandum of May 1, 1952, in which he states the opinion that the commercial fishing regulations may be applied only within territorial waters, which he interprets as extending for a distance of three miles offshore. Enclosed are two copies of an article entitled, "The Three-Mile Limit," by Lcdr. Emory C. Smith, U.S. Navy, which appeared in the JAG JOURNAL, a publication devoted to legal matters and Judge Advocate General decisions of interest to the military. Principal emphasis of Commander Smith's article is between the absolute sovereignty which a State may maintain over waters within three miles of its coast as contrasted to jurisdiction or control, which may be exercised over more extended but contiguous areas of peculiar interest to the state, such as its fisheries. The Hague decision in the recent fishery controversy between England and Norway accepts the premise that a nation may exercise control in specific matters which within the bounds of reasonableness are peculiar to its own welfare and interest. It is our hope that the gradual evolution of State Department policy and international law will eventually establish the authority of the United States to protect and manage domestic stocks of fish which range beyond the narrow confines of territorial waters.

Authority over the high seas salmon fishery will probably be achieved through the workings of the Japan-Canada-United States North Pacific Fishery Treaty, which should surely provide that the signatory nations may control their own nationals anywhere within the treaty area.

In the meantime, however, it may be well worth while to keep track of the Eagle Subcommittee activities and to make sure that the record of its proceedings takes full cognizance of fishery protection problems in the North Pacific and the Bering Sea.

CLARENCE J. RHODE
Regional Director

Attachment

THE THREE-MILE LIMIT--I

By Lcdr. Percy C. Smith, U.S.N.

The development of weapons of modern warfare has caused many students of international affairs to wonder whether or not the 3-mile limit of territorial waters affords sufficient protection to the United States.

This is the first of two articles discussing a brief history of the 3-mile limit, and what appear to be exceptions to the American doctrine which recognizes the 3-mile limit as a rule of international law. The second article, which will appear in an early issue of the JAG JOURNAL, will discuss the right of self-defense beyond the 3-mile limit as well as recent developments pertaining to the control of the air space reservations.

Few topics have provoked more controversy or elicited more divergent views and opinions than that of the extent of territorial waters. The practice of nations viewed over a period of 200 years ranges from one extreme to the other. It is possible to take any of several positions relative to the extent of a territorial sea or relative to the nature of the jurisdiction therein, and to support each by the authority of text writers and numerous illustrations drawn from international events, ancient and modern. It is felt that the greater part of the disagreement as to the extent of territorial waters is basically due to the concept of jurisdiction. Having recognized this reason for the disagreement we may make a useful distinction between claims to territorial waters and claims of jurisdiction or control upon the high seas, to explain the apparent disagreements pertaining to the question.

This idea is corroborated by Prof. Hyde in his treatise on International Law, who states in substance that there is a real distinction between a right of sovereignty over a particular area and a right to exercise a preventive or protective jurisdiction over or within an area that is outside of the national domain. This basic distinction between sovereignty and preventive or protective jurisdiction must be kept firmly in mind in order to rationalize the varying degrees of authority which a nation may exercise over the sea.

To discuss at any length the 3-mile limit would be an academic, time-consuming and unnecessary discourse. Suffice

it to say, however, that there exists a preponderance of opinion among the authorities that the 3-mile limit for the marginal sea stands today as a rule of international law. Furthermore, the authorities are practically unanimous in the opinion that within 3 miles of the coast a State may, under international law, exercise any jurisdiction and do any act which it may lawfully do upon its own land territory. In short, a State has sovereignty over waters lying within 3 miles of its coast. While there are some nations which claim jurisdiction over waters more than 3 miles from its coast, the United States has long been a champion of the 3-mile limit.

The first view of our Government as to the territorial limits at sea seems to have been made in a report of a congressional committee, submitted on January 8, 1782 relative to the right of American fishermen to ply their trade, particularly off the Newfoundland banks, to the effect that our Nation did not claim the right of fishing within three leagues of the British shores. On November 8, 1793, Secretary of State Jefferson informed the British and French ministers that "the ultimate extent" of the marginal sea was reserved "for further deliberations." However, Mr. Jefferson went on to state that the President had instructed American officials to restrain the enforcement of their orders "for the present to the distance of one sea league or three geographical miles from the sea shores." This measure was adopted by Congress in the following year when it gave the district courts "cognizance of complaints, by whomsoever instituted, in the cases of captures made within the waters of the United States or within a marine league of the coasts or shores thereof" (sec. 6, Act of June 5, 1794, 1 Stat. 384).

From time to time the United States has reasserted its adherence to the 3-mile limit in various diplomatic notes, court opinions, and by its actions. The Navy War Code of 1900, Art. 11, declares: "The territorial waters of a State extend seaward to the distance of a marine league from the lowest water mark of its coast line." And finally, the United States Supreme Court seems to fix American jurisprudence in support of the 3-mile limit in the case of Cunard S.S. Co. et al. v. Mellon (43 S. Ct. 504 (1923)).

While the United States has for nearly 150 years recognized the 3-mile limit and has followed the doctrine of "freedom of the seas," there are notable exceptions which, at first blush, would indicate an inconsistency of position. However, it is reiterated for the sake of emphasis that the rule of international law which recognizes the 3-mile limit as the boundary of that part of the sea which constitutes part of the territory of the littoral State is not inconsistent with the claim to a more extended control on the high seas. As a matter of further emphasis, it is pointed out that the 3-mile zone is in reality "a territorial" sea, coming fully under the domain or sovereignty of the adjoining State.

Perhaps the first apparent departure which our country took from the 3--mile limit principle was when it followed the British lead by passing the Act of March 2, 1799. The Act provided that every ship "bound to any port or place in the United States" might be boarded within four leagues of the American coast, examined, searched, and compelled to show a manifest. It is to be noted that the law had application only to ships which were bound to the United States. The principle of the Act of March 2, 1799, was incidentally considered by the Supreme Court in several cases. The first of these cases was that of Church v. Hubbart, (1804), 2 Cranch 187, in which Chief Justice Marshall, speaking for a unanimous court ruled that a nation might lawfully take steps upon the high seas to protect itself and secure its laws from violation, provided the measures employed satisfy the test of reasonableness.

The Treaty of Guadalupe Hidalgo between the United States and Mexico in 1848 represents another apparent departure from the 3--mile limit principle. The British protest to Art. V of the treaty on the grounds that it extended the 3-mile limit was satisfied when our Government informed the British Government that the treaty only affected the United States and Mexico, and in no way infringed on the rights, under international law, of any other nation.

Another seeming inconsistency in the position of the United States with reference to the 3-mile limit principle occurred during the years 1886-89 in the seizure of certain British sealing schooners in the Bering Sea by U.S. revenue cutters against which the British Government protested.

The matter was settled by arbitration on February 29, 1892. The arbitrators decided that the United States had no right of protection or property in fur seals frequenting the islands of the United States in the Bering Sea when such seals were found outside the ordinary 3-mile-limit. A later treaty, however, was entered into between the United States, Great Britain, Russia, and Japan which prohibited the contracting powers from engaging in sealing in the open seas of the North Pacific Ocean within certain defined areas.

Perhaps the most notable of all "inconsistencies" of this Government with reference to the principle of the 3--mile limit occurred in 1922 when the United States and Great Britain entered into a treaty designed to permit the former to effectively combat the liquor smuggling industry outside the 3-mile limit off the coast of the United States.

As late as December 11, 1941, the President of the United States, by Executive Order, defined for purposes of international defense "defensive sea areas" which extended outside the territorial waters of the United States.

In all of these apparent inconsistencies, it can be seen that the United States was in no way attempting to exercise the same incidents of sovereignty over the high seas which it exercises with respect to its territorial waters within the 3-mile limit. The purpose in each case was limited and specific, and involved only the exercise of a control--in contradistinction to the exercise of a sovereignty--over the waters contiguous to the boundary of the 3--mile limit. In the four instances cited above, the United States has exercised a control outside the 3--mile limit for the purpose of regulating fishing, for enforcement of customs laws and for purposes of self-defense. In every instance set out above, this exercise of control outside the 3--mile limit for the purposes enumerated has been pursuant to treaty with other powers with one notable exception, and that, for the purpose of self-defense.

In addition to the above there have occurred within the past 3 years still other apparent inconsistencies in the United States position with respect to the 3-mile limit. On September 28, 1945, the President of the United States issued two proclamations, the first of which, Proclamation No. 2667, declared as a matter of policy that the natural resources of the subsoil and sea bed of the continental

shelf appertain to the United States, subject to its jurisdiction and control. Simultaneously the President of the United States issued Proclamation No. 2668, which asserted the right of the United States to establish fishery conservation zones in areas of the high seas contiguous to the coasts of the United States, either unilaterally or in concert with other interested States; the character of the waters as high seas and the right to free navigation were declared to remain unaffected.

The concept of asserting jurisdiction over the subsoil and sea bed of the continental shelf, while not new, is of comparatively recent inception. As early as 1916 a Spanish expert, concerned over the depletion of fisheries, urged that territorial waters be extended to include the whole continental shelf, where the important food species chiefly flourished. Similar recognition of the importance of the shelf with respect to fisheries was being voiced simultaneously by Argentine writers who emphasized the need for adequate control. This concern was reiterated some years later in the League of Nations Committee of Experts for the Progressive Codification of International Law.

In quite another connection, the year 1916 also saw the assertion by the Russian Imperial Government of a claim to certain uninhabited islands north of Siberia on the ground that they formed "the northern constitution of the Siberian continental shelf"--an assertion repeated by the Soviet Government in 1924. Also of significance as a precedent, although it did not refer in terms to the the continental shelf, was the treaty of February 26, 1942, between Venezuela and the United Kingdom, undertaking to dispose of the submarine areas of the Gulf of Paria. By the agreement each State undertook to recognize "any rights of sovereignty or control which have been or may hereafter be lawfully acquired" by the other over submarine areas on their respective sides of an arbitrary boundary line. "Submarine areas" were defined as "the sea bed and the subsoil outside of the territorial waters of the High Contracting Parties."

Soon after the proclamation of the President of the United States asserting jurisdiction and control over the continental shelf adjacent to the United States, several Latin American countries asserted sovereignty over the continental shelf contiguous to their land areas. Among these nations were Mexico, Argentina, Peru, Costa Rica, and Cuba. Costa Rica put forth a claim to the continental shelf on both Atlantic and Pacific coasts of Costa Rica, out to a limit of 200 miles offshore regardless of the depth of water.

As to the proclamation of the President of the United States (No. 2667), no claim on behalf of our country to "sovereignty," "title," or "ownership" of the continental shelf was asserted. However, a summary of the actions of the Latin American States indicates that, while all have relied for support on the United States proclamation of 1945, they have gone considerably beyond their prototype in at least two respects: (1) they undertake to effect a categorical extension of sovereignty over the continental shelf and sea bed; and (2) they propound a further claim to the waters which cover the continental shelf.

It is noted in the Proclamation of the President of the United States (No. 2668) asserting the right of the United States to establish fishery conservation zones in areas of the high seas contiguous to the coasts of the United States no reference was made to the continental shelf. The claim proceeded on a general theory of the right of a coastal State to protect its contiguous fisheries; the zone concept doubtless was derived from the customs enforcement areas authorized by the Anti-Smuggling Act of August 5, 1935 (49 Stat. 518). However, the Latin American States have sought in their actions to achieve both objectives through a single comprehensive claim to the continental shelf and to the waters over it.

This assertion of sovereignty by the Latin American countries goes beyond anything put forward in either of the United States proclamations. It presumably implies, for example, sovereignty in the air space over the claimed areas--a question of the first importance, for, as will be shown in the succeeding article, there is no right of innocent passage by air. Even on the surface, though rights of free navigation be recognized in such a claim, there is in the claim itself an infringement, in principle at least, of traditional views on the character of the high seas.

The foregoing has sought to give a résumé of the exceptions or apparent inconsistencies of the American position with reference to the 3-mile limit. In view of the present American position it is concluded that there can be no legal extension of the territorial waters of the United States or its possessions beyond the 3-mile limit. To make any unilateral extension of the territorial waters of the United States would be, in effect, to pursue a course directly contrary to the preponderance of international law, and would amount to an abandonment of the time-honored United States position with reference to the freedom of the seas which has been zealously maintained since the early days of the Republic.

Director, FWS, Washington, D.C. December 16, 1952

Regional Director, FWS, Juneau, Alaska

High seas fishery jurisdiction

In response to Dr. Kask's memorandum on above subject I am attaching copy of my original inquiry dated March 31 and Mr. Thompson's answer of May 1, 1952. Until today I had not seen this answer since I was away from headquarters when it arrived.

The question still needs some attention, however. Last week we forwarded some additional material bearing on the subject. The meetings in Seattle brought up the point of jurisdiction over the trawl fishery in the Bering Sea. This has importance from the standpoint of Japanese Treaty conditions relating to application of conservation regulations. If we have no jurisdiction beyond the three mile limit our trawl regulation is of no effect and we cannot be said to have had the fishery under conservation provisions. In view of Treaty provisions we are wondering if regulation of the bottom fishery adjacent to Alaskan shores should be contemplated at an early date.

Mr. Thompson mentioned Cook Inlet as an undetermined area with regard to its status as Territorial waters. Halibut fishing is carried on under treaty in what we call the lower Inlet. That would make a case for its exclusion from Territorial waters but we must govern drift gill net salmon operations or lose control completely. When the question arose last year off the Copper river and Prince William Sound areas I arbitrarily advised we considered waters inside of a line from Cape St. Elias to the western entrance of Prince William Sound as Territorial waters. This was not challenged at the time but I presume will be as the competition for the fishery continues.

I would like to see some official declarations made on a number of areas, including Bristol Bay, and so state in our regulations that jurisdiction is claimed. Canada, and other countries, have taken a stronger stand. "Grandfather" rights may be at stake in addition to the problem which will arise when our own nationals decide to stake off three miles and thumb their noses at all fishing regulations. There is already the question of quotas or closed seasons on the herring and crab fishery often conducted offshore.

CLARENCE J. RHODE

Enclosure

Office Memorandum • UNITED STATES GOVERNMENT

TO : Assistant Director Kask DATE: February 20, 1953

FROM : Chief Counsel

SUBJECT: High seas fishery jurisdiction

Some time ago you referred for my consideration a file relating to the regulation of fishing in the territorial waters of Alaska. In lieu of making an immediate reply either to your office or the Regional Office at Juneau, it was decided to discuss the problem with Regional Director Rhode during the Regional Directors' Conference. While that discussion was not extensive, it is believed that most of the questions presented by Mr. Rhode were answered.

Since then, the question of the position of the United States regarding the exercise of jurisdiction beyond the three-mile limit has been considered in connection with other matters. It probably is necessary to point out now only that any attempted extension of jurisdiction by the United States is fraught with considerable danger insofar as international repercussions are concerned. It also may be noted that any such extensions seem to be frowned upon by the fishing industry and administrators alike.

This memorandum is simply to close the file for the time being.

Donald J. Cheney

Donald J. Cheney

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569-731 O - 75 - 13

PX 77

Enforcement Agent Larsen, FWS, Anchorage
Enforcement Agent Roberds, FWS, Cordova
Law Enforcement Supervisor, FWS, Juneau

May 8, 1953

Attached confidential memo re Cook Inlet

Enclosed for your information and guidance is a copy of a confidential memo from Director Day in answer to an inquiry from the Regional Office dealing with our Enforcement authority beyond the three-mile limit.

As the Director points out, this is a legal question and the Chief Counsel's opinion which the Director quotes will be the policy which we will follow. I am not in complete agreement with Counsel regarding Cook Inlet, as it is my opinion that this Inlet is and has been historically claimed as Territorial waters. However, this has no bearing on the present issue and is merely brought out in the hope that you will be able to collect evidence which would bear out my point.

Although Counsel's opinion deals only with Cook Inlet, the same situation could be encountered in Prince William Sound, in which case it should be handled in accordance with Counsel opinion of Cook Inlet Enforcement.

This matter must be treated as confidential within the Service and under no conditions publicized to the general public

DAN H. RALSTON

DHRalston:bb

Office Memorandum • UNITED STATES GOVERNMENT

-Confidential-

TO : Regional Director, Juneau, Alaska DATE: April 28, 1953

FROM : The Director

SUBJECT: Your memorandum of April 3.

I can understand your preoccupation with regard to action to be taken by your enforcement officers if United States or foreign vessels fish in violation of our regulations in extra-territorial waters (i.e., beyond three miles) of Cook Inlet or Bristol Bay. As this is largely a legal problem, I have referred it to our Chief Counsel. The following is a quotation from his opinion:

> "To the best of my knowledge, Cook Inlet has not been claimed as a historical bay and, thus, it would seem unwise to take any action against foreign vessels fishing beyond the territorial waters of Alaska, i.e., 3 miles. This is particularly true in view of the numerous claims and counterclaims which have been made by the United States and countries to the south regarding the extent of territorial jurisdiction. With respect to United States vessels, I am inclined to feel that we should attempt to regulate their fishing operations in Cook Inlet and similar areas. While the Alaska Commercial Fishery Acts refer only to territorial waters, the basis of their application to citizens may be quite different from that involved in their application to foreign vessels. It is doubted that the reference was intended to be strictly construed. In any event, one of the means by which a historic bay status may be established is to claim jurisdiction at least over the citizens of this country in such waters."

I concur with this opinion and you are directed to act accordingly.

(SGD.)

Albert M. Day
Director

COPY

PX 78A

Wm. C. Todd — 1943

NAME OF BOAT — CAPTAIN — TRIP NO.

DATE	NAME OF PLACE	COMPASS	DIST.	NO. SKATES	CATCH			
7/4	Wallace Reef	C	40	35	3000	27		
7/5	Running for Pollock Bnk			10	500	1		
7/6	Pollock Bnk			46	500	26		
7/7	Eagle Pnt			48	4000	1		
7/8	"			52	5000			
7/9	Chirgoch Isl	E	2.5	16	2500	2600		
7/10	"	"	4	54	9000	1		
7/11	"	"	3	36	3500			
7/12	"	"	3	47	3500			
7/13	Gore Pt		3	36	3500	26		
7/14	"		"	57	2000	1		
7/15	Pollock Bnk			15	1500			
7/16	Alysanoe Bank		65	60	4000			
					(1) 15 - 3500		L	X
					(2) 2.5 - 25500		A	/
					(3) 123 - 21000		C	/

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel Wm. C. TODD is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

SUBSCRIBED AND SWORN TO BEFORE ME THIS 4th DAY OF JANUARY, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

Kaare II — 1943

NAME OF BOAT — CAPTAIN — TRIP NO.

DATE	NAME OF PLACE	COMPASS	DIST.	NO. SKATES	CATCH				
June 3	L. Van								1.30
4	L Ketch								
13	SE Pollock	25		48	5-75-5	*			
14	"			3-5	6635				
15	Pollock Bank	"		28	2345	32	305	37,596	X
16	"			28	1134				
17	Cook Inlet	260			177				
18	Pollock	25		34	7458				
19	"	"		44	6880				
20	"	"		36	5036				
21	"	"		36	4904				
26	P Rup. List 25								

* The odd amounts are due to the fact that the estimates made by the boat's officers will have to be changed after the boat is checked in.

Say 2 chinook 70 # the rest 15 #.

L. ✓ A. — C. KKK

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel KAARE II is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

SUBSCRIBED AND SWORN TO BEFORE ME THIS 4th DAY OF JANUARY, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

Northern Dawn (8791) — 1967 — Trip No. 6/26 — Date Copied — Halibut — No. Skates — No. Dogs — End Line: Wt. 28, Kind Ny. — Hanging: Wt. —, Kind Ny. — Rig 13 — No. Lines 6 — Size of Hook 2 — No. Hooks per Skate 35-11 — Factor 132 — Inventory — Checked

Captain Tiko Jr. — Address [illegible] 25 — 4 00 4 — 3 158

Date	Name of Place 5	Day	Area	Skates	Catch	Reason Code
6/9	Cape Muzon 3-4 mile E 100 fms 120-132 fms	1	271	42	20,000	
10	" " " "	2		42	2,000	
11	" " " "	3		22	6,000	
12	Cape Jaket (3-4 mile Cape Douglas) 90	4	272	31	9,000	
13		5		39	8,000	
14		6		42	9,000	
15		7		42	10,000	
16		8		28	6,000	
17	Cape Ulitka	9	281	37	9,000	
18	"	10		42	7,000	
19	Barren I. 3 mi. SW	11	261	37	20,000	
20	" "	12		55	28,000	
21	" "	13		61	21,000	
22-25	Running to Prince Rupert					
26	Sold in Prince Rupert to Cargo			586	150000	
1						

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King

Northern Dawn — 1967 — Trip No. 7/24 — Date Copied — Halibut — No. Dogs Shorted — End Line: Wt. —, Kind — — Hanging: Wt. —, Kind — — Rig — — No. Lines — — Size of Hook — — No. Hooks per Skate 12 — Factor — — Inventory — Checked

Captain — Address 2 — 28

Date	Name of Place 5	Day	Area	Skates	Catch	Reason Code
7/9	BARREN I. SW 3 M 21 F	1	261	46	36 000	99
10		2		18	10 000	
11		3		52	15 000	
12		4		40	24000	
13	HEADING DAY (SUNDAY)	5				15
14	BARREN I. SW 3 M 72 F	6		29	12 000	
15		7		28	14 000	
16		8		27	7 000	
17		9		30	14 000	
18		10		48	14 000	
19		11		24	6 000	
20-23	RUNNING TO [illegible]					
24	SOLD IN [illegible] TO [illegible]			360	155 000	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King

(8373) LINDA — 1972 — DATE COPIED 8/9 — PATTON 95

CAPTAIN S. TOSTAD — TRIP NO. 3 — DRAFT 28

ADDRESS 3149 N 34th Ave. Seattle, Wash.

DATE	NAME OF PLACE 13	DAY	AREA	SKATES	CATCH	REASON CODE
6/20	COPE DOUGLAS 6 MILES OFF	1	271	4/8	5,000	
21	"	2		4/8	4,000	
22	BIRAL ISLAND	3	261	4/8	4,000	
23	"	4		4/8	3,000	
24	RUNNING	5				15
25	TRINITY	6	290	4/8	4,000	
26	RUNNING	7				14
27	6 MILES NW LIGHTHOUSE ROCK	8	300	54	7,000	
28	" " "	9		63	8,000	
29	" " "	10		63	8,000	
30	" " "	11		63	7,000	
7/1	" " "	12		54	6,000	
2	" " "	13		45	5,000	
3	RUNNING	14				14

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel LINDA is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

(8791) NORTHERN DAWN — 1972 — DATE COPIED 7/17 — PATTON 100

CAPTAIN — TRIP NO. 4 — DRAFT 28

ADDRESS

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
Jun 27	FAIRWEATHER GNDS 4 mls S. DRY BAY 120	1	190	70	3,000	
28	20 mls S. BLACK SAND IS.	2		70	4,000	
29	RUNNING	3		-	-	14
30	↓	4		-	-	14
Jy 1	5 mls E BARREN IS	5	260	81	13,000	
2	↓ ↓	6		72	10,000	
3	6 mls W. FLAT IS. - COOKS INLET	7	261	72	10,000	
4	↓ ↓ ↓	8		80	12,000	
5	↓ ↓ ↓	9		60	10,000	
6	5 mls E CHUGACH IS.	10	260	79	10,000	
7	↓ ↓	11		74	6,000	
8	5 mls S. PYE IS.	12	250	66	7,000	
9	↓ ↓	13		71	8,000	
10	↓ ↓	14		71	7,000	
11	↓ ↓	15		70	7,000	
12	↓ ↓	16		99	7,000	
13	Anvert			1015	114000	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

(7816) 47 70 10

FREELAND — Trip No. 1 — Date Copied 8/14 — Bait: 25

Captain Dave Sutton — Vancouver

Address Suite 101 - 2207 W. 1st

Date	Name of Place	Day	Area	Gng Line Wt	Gng Line Kind	Ganging Wt	Ganging Kind	Rig	No Lines	Size of Hook	No Hooks per Skate	Factor 75
7/29	Seward Gully	1	250	56		6000			6	6263 Saimo	100	Inventory
29	↓	2		64		6000						Checked
30	NE Corner Portlock	3		64		3000						
31	↓	4		32		2500						
2	Marmot	5	270	64		2500						
3	↓	6		64		3000						
4	Into Kodiak for fuel	7							12			
5	Shelikof (upper!)	8	271	64		5000						
6	NE Gale	9							2			
7	↓	10		40		3000						
8		11		64		3000						
9	set only	12							31			
10	Cook Inlet	13	261	64		5000				lost 1500 ± fl		
11	/	14		64		7000						
12		15		64		10000						
13	↓	16		64		7000						4

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

A. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King.

(7272) 70

Brooks Bay — Trip — 7/29 — Date Copied — Bait:

Captain Ivan Elingson

Address 1218 Burlington Bld 3 Seattle

Date	Name of Place	Day	Area	Gng Line Wt	Gng Line Kind	Ganging Wt	Ganging Kind	Rig	No Lines	Size of Hook	No Hooks per Skate	Factor 71
7/27	Kashwank	1	260	40		4500						Inventory
28		2		40		5000						Checked
29	Barren Isl, Sugarloaf Pt.	3	261	50		6000						
30		4		60		3500						
31		5		40		4000						
1		6		—		—			15			
2		7	260	50		5700						
3		8		70		900			8			
4		9		—		—			15			
5	No Fishing	10		—		—			15			
6	" "	11		—		—			15			
7	" "	12	260	60		4000						
8	Two Headed Island	13		70		8300						
9		14		50		7000						
10		15							15			
11	No Fishing											1

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

A. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King.

(7815)

FREELAND (BOAT) — 70 ins — DATE COPIED — BAIT — No. Hooks Baited — No. Hooks Dropped — End Line Wt / End Line Kind — Sanding Wt / Sanding Kind — Rig — No. Lines — Size of Hooks — No. Hooks per Skate — Pages 75

CAPTAIN — TRIP NO. 4 — DATE COPIED 8/14 — 25

ADDRESS — Inventory ✓ — Checked ✓

DATE	NAME OF PLACE 13	DAY	AREA	SKATES	CATCH	REASON CODE
7/23	Cape Douglas	1	271	48	4500	
24	↓	2		44	4000	
25	Cook Inlet	3	261	64	8000	
26		4		64	7000	
27		5		64	6000	
28		6		64	4000	
29	bait	7				13
30	Low Cape	8	280	40	2000	
31	↓	9		64	4000	
8/1	running	10				14
2	Engine trouble - Lazy Bay	11				11
3		12				11
4		13				11
5	Trinity	14		42	1000	5
6	Chiniak	15	270	64	2000	5
				555	42500	
7	Sold Kodiak					

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. Mac-Donnell

Notary Public in and for the State of Washington, residing at Seattle, County of King.

FREELAND (BOAT) — 70 ins — DATE COPIED — BAIT — No. Hooks Baited — No. Hooks Dropped — End Line Wt / End Line Kind — Sanding Wt / Sanding Kind — Rig — No. Lines — Size of Hooks — No. Hooks per Skate — Pages

CAPTAIN — TRIP NO. 1 — DATE COPIED 8/14

ADDRESS — Inventory — Checked ✓

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
5/14	Cook Inlet Due W. Flat Islet 3 mi	17	261	64	3000	
15	↓	18	1	64	3500	
				896	69,500	
19	Sold Kodiak					

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

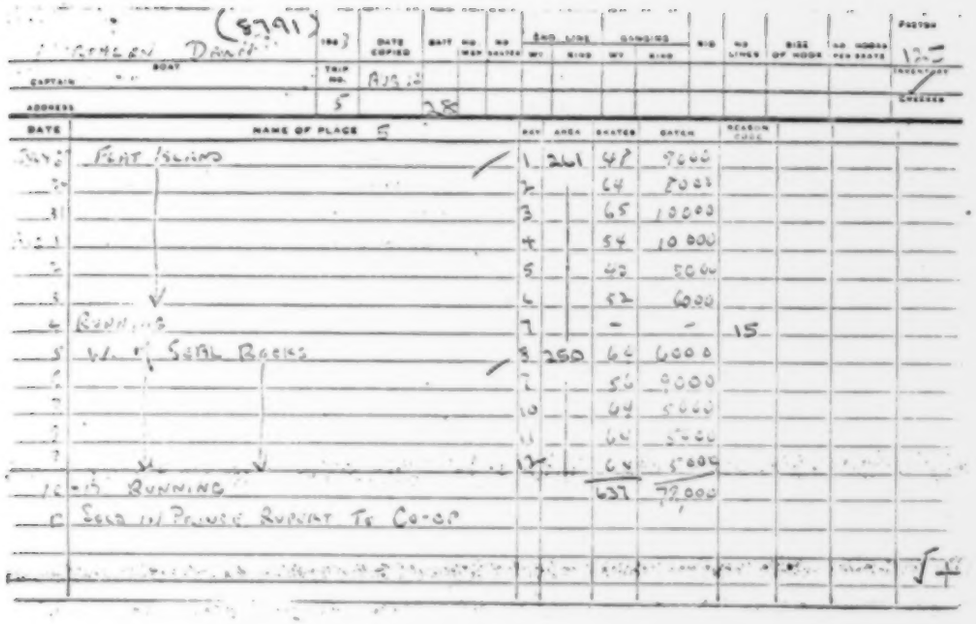
Bernard E. Skud

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. Mac-Donnell

Notary Public in and for the State of Washington, residing at Seattle, County of King.

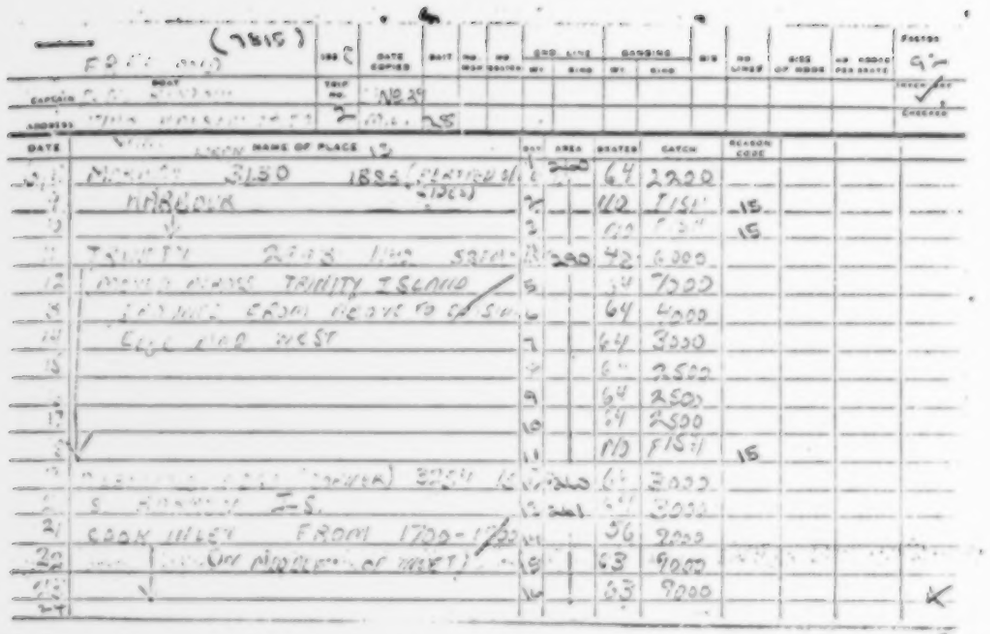


I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

Notary Public in and for the State of Washington, residing at Seattle, County of King



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Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

Notary Public in and for the State of Washington, residing at Seattle, County of King

(7815)

Freeland (BOAT)

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
Jul 11	116-329S 117-252W	1	250	65	5000	
12		2		62	7000	
13	77 Fms	3		65	5000	Ins 99336
14	Anchor Point	4	261	62	5000	
15		5		62	3000	
16		6		69	6000	
17		7		63	6000	
18		8		63	4900	
19		9		62	5000	
20		10		62	5000	
21		11		62	5000	
22		12		62	5000	
23	No fish	13				15
24		14				15
25	NE Cosmos Portlock	15	260	61	1000	8
5/2	Seattle - SSE			921	62,100	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

(9723)

WESTERN CRUSADER (BOAT)

CAPTAIN C. M. HICKMAN TRIP NO. 31249

ADDRESS 4224 E 167th VAN WASH. 98

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
6/14	BARREN ISLAND	1	260	64	4000	
15		2		64	4000	
16		3		64	4000	
17	CAPE CHINIAK AND CHELIKOF	4	270	50	4000	
18	CAPE DOUGLAS	5	272	72	4000	
19		6		64	4000	
20		7		32	4000	
21	(LULL)	8		64	4000	
22		9		64	4000	
23	MARMOT ISLAND	10	270	NO	FISH	15
24		11		64	4000	
25	S.E. COPPER, PORTLOCK	12	250	NO	FISH	15
26		13		64	4000	
27	EDGE, DEEP HOLE (PORTLOCK)	14	260	62	4000	
28		15		49	4000	
29	MARMOT FLAT	16	270	18	2779	
7/4	RUPERT, 256 TO ATCH			929	50,000	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel WESTERN CRUSADER is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

604-731 O - 73 - 14

(5791)

NORTHERN DAWN — BOAT — 1965 — TRIP NO. 5 — DATE COPIED Sept 23 — FACTOR 100

CAPTAIN — ADDRESS

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
Aug 12	Pie Island 3 miles (E)	1	250	27	3,000	
13	↓	2		83	10,000	
14	↓	3		83	10,000	
15	↓	4		54	6,000	
16	Point Banks 3 Miles (E)	5	260	93	3,000	
17	↓	6		66	10,000	
18	↓	7		42	4,000	
19	Cook Inlet E of St Augustein Is	8	261	75	2,000	
20	Low Island	9	270	93	8,000	
21	Kukak Bay	10	271	25	5,000	
22	↓	11		53	9,000	
23	↓	12		85	4,000	
24	Hazard Bay	13	270	57	3,000	
25	↓	14		91	5,000	
26	↓	15		34	4,000	
27	Sold Kodiak Alaska Ice & Cold St.		901		87,000	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King

(5791)

NORTHERN DAWN — BOAT — 1966 — TRIP NO. 8/21 — DATE COPIED

CAPTAIN JOHN J DAHLSEN — ADDRESS 930, 14th Ave E, SUPERIOR 4

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
8/2	KUKAK BAY	1	271	44	6,000	
3	↓	2		72	7,000	
4	CAPE DOUGLAS	3		40	7,000	
5	↓	4		29	2,000	
6	↓	5		64	4,000	
7	BARREN ISLANDS South	6	261	60	4,000	
8	↓	7		59	5,000	
9	↓	8		71	5,000	
10	NORTH	9		64	16,000	
11	↓	10		56	10,000	
12	↓	11		58	10,000	
13	↓	12		49	7,000	
14	↓	13		75	12,000	
15	LAST DAY	14		69	7,000	
22	Superior			797	102,000	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDougall

Notary Public in and for the State of Washington, residing at Seattle, County of King

SKARDALE (9331)

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
11/4	Cape Suckling	1	220	54	5000	
5	Re Load	2	1	—	—	14
6	Cape Douglas	3	221	54	5000	
7	" "	4		54	5000	
8	" "	5		54	4000	
9	Rivers Inl	6	261	27	3000	
10	Cape Clarence	7	240	54	5000	
11	" "	8		54	5000	
12	" "	9		54	5000	
13	" "	10		54	5000	
14	" "	11		54	5000	
15	" "	12		54	5000	
16	" "	13		54	2500	
17	" "	14		54	5000	
				675	65,000	
22	Pt Rupert Sold Atlin					4

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel SKARDALE is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

Notary Public in and for the State of Washington, residing at Seattle, County of King

NORTHERN DAWN (8791)

Captain George H Dalton

Address 65' 11m E, Ruvet

DATE	NAME OF PLACE	DAY	AREA	SKATES	CATCH	REASON CODE
6/9	Amlyak I 3mi N	1	220	56	6000	NO
10	↓	2		68	4000	Other Species
11		3		96	10000	
12	Marmot Is 10mi E	4		72	7000	
13	↓	5		70	5000	
14	20mi	6		64	10000	
15	12-20mi	7		50	3000	
16	↓	8		47	2000	
17	↓	9		53	4000	
18	Cook Inlet entrance	10	241	56	3000	
19	↓	11		47	2000	
20	Sea Otter Is 12mi	12	220	52	4000	
21	no fishing ↓	13		NO FISH		15
22	Makushin Bay E (Fish) + Black Cape Inl (4038)	14	271	96	8000	
				850	84,000	
27	Rupert, Sold to Co-op					4

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

Notary Public in and for the State of Washington, residing at Seattle, County of King

BEST COPY AVAILABLE

(7815)

FREELAND — 1969 — DATE COPIED — BAIT — NO. HKS. BAITED — NO. HKS. SET — GND. LINE WT. — GND. LINE KIND — GANGING WT. — GANGING KIND — RIG — NO. LINES — SIZE OF HOOK — NO. HOOKS PER SKATE — FACTOR — INVENTORY — CHECKED

CAPTAIN D.A. DINTAMAN — BOAT — TRIP NO. 2 — 9/26 — WKD 25 — 7 — 65 — 18 — 6 — 5/0 (EACH) — 110

ADDRESS 312 ELM VAN. 12

DATE	NAME OF PLACE 5	DAY	AREA	SKATES	CATCH	REASON CODE
6/5	Cook Inlet Anchor Pt 5t 1800 - 1700			—	—	
7		1	261	65	6000	
8		2		62	4000	
9		3		48	4500	
10	Chinitna Pt	4		71	5000	
11	Chinitna Pt	5		66	4500	
12	" "	6		60	10000	
13	Chinitna Bay	7		64	8400	
14	Chinitna Bay → Waterfall	8		56	5500	
15	Seldovia for fuel + water	9		—	—	17
16	Waterfall to Oil Pt	10		63	7400	
17		11		22	2000	
18		12		68	9350	
19		13		46	4500	
				688	67,600	

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

Northern Dawn — 1967 — DATE COPIED — BAIT — NO. HKS. BAITED — NO. HKS. SET — GND. LINE WT. — GND. LINE KIND — GANGING WT. — GANGING KIND — RIG — NO. LINES — SIZE OF HOOK — NO. HOOKS PER SKATE — FACTOR — INVENTORY — CHECKED

CAPTAIN J. Johnson — TRIP NO. — Sept. 7

ADDRESS 430 4th Ave. West Rupert BC 28

DATE	NAME OF PLACE 13	DAY	AREA	SKATES	CATCH	REASON CODE		
6/21	Shelikoff Straits	1	29	80	9000		8/0	8000
22	Running	2		No Fish		14		
23	Halibut Bay	3	261	58	6000			
24	North of Halibut Bay	4		65	6000			
25	Rocky Point	5		84	10000			
26	Running	6		No Fish		14		
27	Point Banks	7	260	85	10000			
28	Cooks Inlet	8	261	61	8000		12/0	13700
29		9		97	10000			
30		10		64	7000			
7/1		11		81	9000			
2		12		81	9000			
3		13		64	4000			
4	Chugach Inlet	14	260	63	8000			
5		15		81	9000			

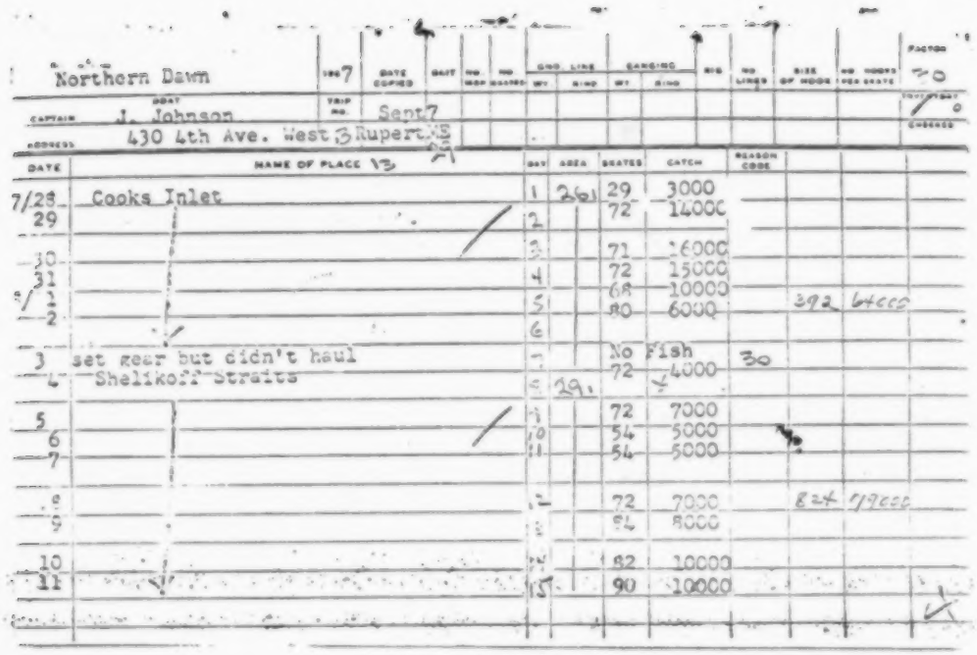
I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D. MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King



Northern Dawn — 1967 — DATE COPIED — GEAR — NO SKATES — LINE SIZE — HOOKS PER SKATE — FACTOR 7.0

CAPTAIN J. Johnson — TRIP NO. Sept 7 — INSPECTED ✓ 0

ADDRESS 430 4th Ave. West, Rupert, B.C. — CHECKED

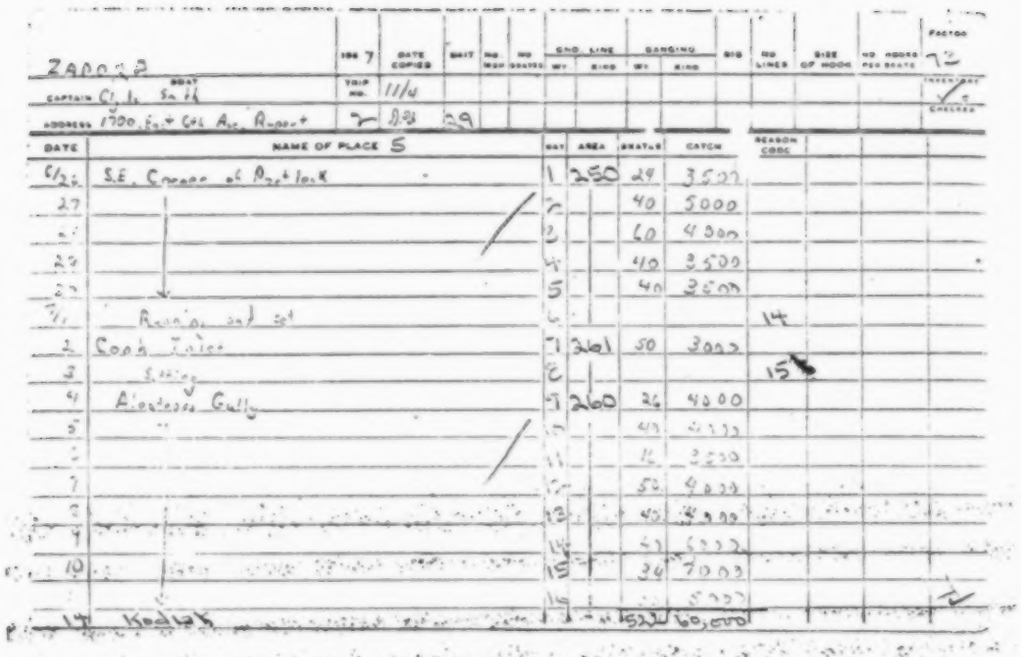
DATE	NAME OF PLACE 13	DAY	AREA	SKATES	CATCH	REASON CODE	SIZE OF HOOK	NO HOOKS PER SKATE
7/28	Cooks Inlet	1	261	29	3000			
29		2		72	14000			
30		3		71	16000			
31		4		72	15000			
8/1		5		68	10000			
2		6		80	6000		392	64000
3	set gear but didn't haul	7		No Fish		30		
4	Shelikoff Straits	8	291	72	4000			
5		9		72	7000			
6		10		54	5000			
7		11		54	5000			
8		12		72	7000		824	119000
9		13		54	8000			
10		14		82	10000			
11		15		90	10000			

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel NORTHERN DAWN is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

Notary Public in and for the State of Washington, residing at Seattle, County of King



ZAPORA — 1967 — DATE COPIED 11/4 — GEAR — NO SKATES — LINE SIZE — HOOKS PER SKATE — FACTOR 7.2

CAPTAIN Clyde Smith — TRIP NO. 7 — INSPECTED ✓

ADDRESS 1700 5th Ave. Rupert — 1.23 — 29 — CHECKED

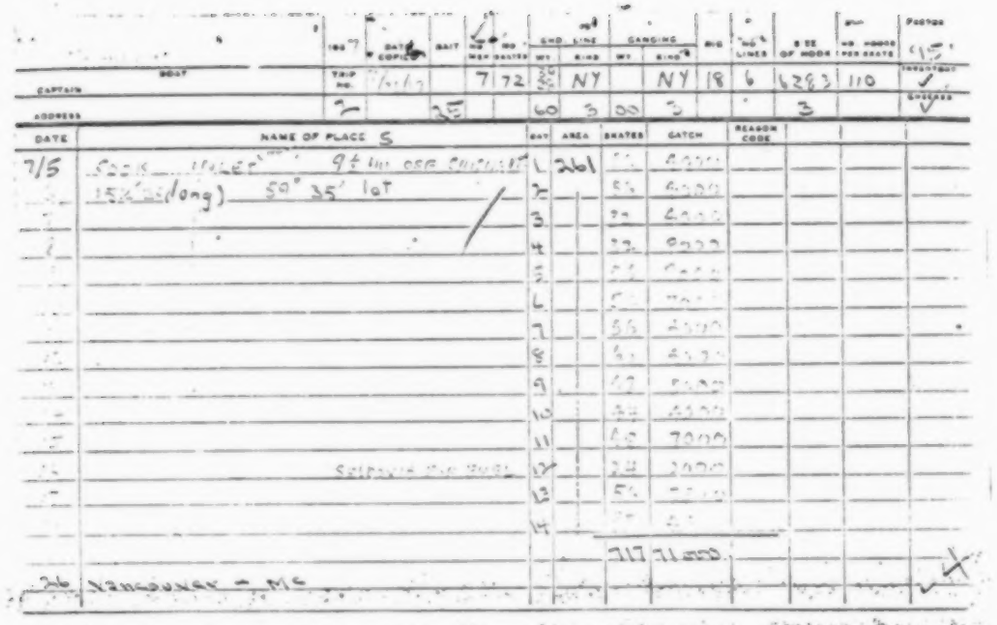
DATE	NAME OF PLACE 5	DAY	AREA	SKATES	CATCH	REASON CODE	SIZE OF HOOK	NO HOOKS PER SKATE
6/26	S.E. Cape of Baynes Island	1	250	29	3500			
27		2		40	5000			
28		3		60	4000			
29		4		40	3500			
30		5		40	2500			
7/1	Running out to	6				14		
2	Cook Inlet	7	261	50	3000			
3	Fishing	8				15		
4	Aleutian Gully	9	260	36	4000			
5		10		42	4200			
6		11		14	2200			
7		12		56	4800			
8		13		42	3900			
9		14		42	5200			
10		15		36	7000			
		16			5200			
17	Hooks	17		1522	60,000			

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel ZAPORA is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

Notary Public in and for the State of Washington, residing at Seattle, County of King



BOAT	19	DATE COPIED	BAIT	NO. MEN	NO. SKATES	GANGING LINE WT.	GANGING LINE KIND	GANGING WT.	GANGING KIND	RIG	NO. LINES	SIZE OF HOOK	NO. HOOKS PER SKATE	FACTOR
CAPTAIN	TRIP NO.	7/6/72		7	72	30	NY		NY	18	6	6283	110	INVENTORY ✓
ADDRESS	2		35			60	3 00		3			3		AREAS ✓

DATE	NAME OF PLACE S	DAY	AREA	SKATES	CATCH	REASON CODE			
7/5	Sooke Inlet 9½ mi ESE Sooke	1	261	6	6000				
	15½ mi (long) 50° 35' 10"	2		5½	6000				
		3		5½	6000				
		4		5½	6000				
		5		5	5000				
		6		5½	6000				
		7		5½	2000				
		8		5½	2000				
		9		12	5000				
		10		5½	6000				
		11		6½	7000				
	Sailing time home	12		2½	2000				
		13		5½	[illegible]				
		14		[illegible]	[illegible]				
				717	71,500				
26	Vancouver - MC								

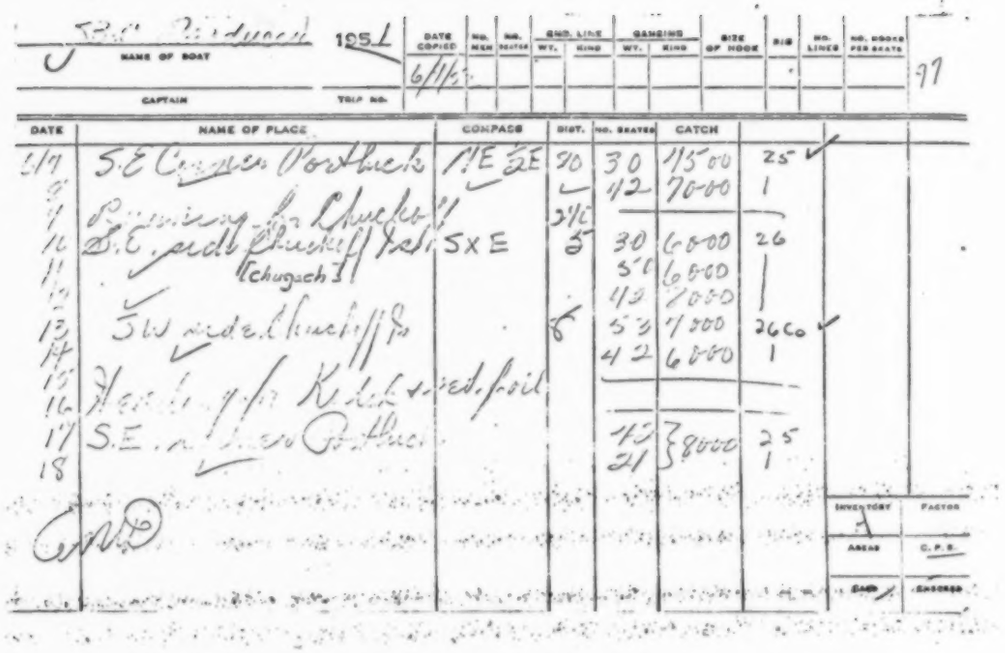
I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel FREELAND is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

Subscribed and sworn to before me this 4th day of January, 1972

D MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King



NAME OF BOAT	19	DATE COPIED	NO. MEN	NO. SKATES	GANGING LINE WT.	GANGING LINE KIND	GANGING WT.	GANGING KIND	SIZE OF HOOK	RIG	NO. LINES	NO. HOOKS PER SKATE
B.C. Producer	1971	6/11/72										
CAPTAIN	TRIP NO.											

DATE	NAME OF PLACE	COMPASS	DIST.	NO. SKATES	CATCH			
7/9	S.E. Corner Portlock	NE EE	20	30	11500	25		
8				12	7000	1		
9	Spring Is Chuckle	"	3½					
10	S.E. ped Chuckle Pt.	SxE	5	30	6000	26		
11	Chugach I			30	6000			
12				12	2000			
13	SW ped Chuckle Pt		8	5 3	1000	2660		
14				12	6000	1		
15	Herb Pt Kelp + red foil							
16								
17	S.E. Corner Portlock			12	8000	25		
18				21		1		
End								

INVENTORY	FACTOR
1	
AREAS	C.P.S.
GEAR ✓	SAMPLES

I, Bernard E. Skud, Director of Investigations of the International Pacific Halibut Commission, hereby certify that the attached record of the vessel B.C. PRODUCER is a true and correct copy of the original on file with the International Pacific Halibut Commission and in my custody.

Bernard E. Skud

SUBSCRIBED AND SWORN TO BEFORE ME THIS 4th DAY OF JANUARY, 1972

D MacDonald

Notary Public in and for the State of Washington, residing at Seattle, County of King

PX 93

THE SECRETARY OF STATE
WASHINGTON

April 14, 1970

Dear John:

Thank you for your letter of January 30, 1970, advising me of the request submitted by Mr. Victor A. Sachse, Special Assistant to the Attorney General of Louisiana, for an interview with me and federal counsel to discuss issues pending in the case of United States v. Louisiana. These issues relate to the delimitation of the seaward extent of inland waters off the Louisiana coast for the purpose of application of the Submerged Lands Act of 1953.

I believe that it would be worthwhile for representatives from the State of Louisiana to visit the Department to discuss these issues. As Chairman of the Inter-Agency Committee on International Policy in the Marine Environment, Ambassador U. Alexis Johnson, the Under Secretary for Political Affairs, supervises the formulation of United States Government policy in this area. Mr. John R. Stevenson, the Legal Adviser of the Department, is principally responsible for directing the formulation of such policy. Therefore, it would be appropriate for Ambassador Johnson to represent me at the suggested meeting with the attorneys from the State of Louisiana. Mr. Stevenson would also attend.

With respect to the questions raised in your January 30 letter, the territorial sea of the United States is measured in strict conformity with the provisions of the Convention on the Territorial Sea and the Contiguous Zone. The United States Government

The Honorable
John [illegible],
[illegible]

- 2 -

has taken no action to establish a system of straight baselines pursuant to Article 4 of that Convention or customary international law with respect to any area along its coast. Regarding historic bays, the Legal Adviser, by letter dated February 20, 1969, to the Solicitor General, has already expressed his opinion on the status of Long Island Sound. The Department is unaware of any evidence regarding a claim by the United States Government of historic bays in any other area which would not now qualify as a legal bay under Article 7, paragraphs 1-5, of the Convention on the Territorial Sea and the Contiguous Zone. It has, for example, found no such evidence with respect to the area mentioned in your letter.

With best personal regards,

Sincerely,

William P. Rogers

PX 98

58-01

..ED STATES GO..ERNMENT

Memorandum

File 500

TO :Regional Director, BCF, Juneau, Alaska DATE: May 2, 1962

FROM :Chief, Branch of Resource Management

SUBJECT: Status of Shelikof Strait

Attached for your information and files are two copies of Secretary Udall's letter of April 20 to the Secretary of State discussing the Interior Department's treatment of the waters of Shelikof Strait in carrying out its fishery management functions prior to Alaska Statehood. You will note that the letter concludes that the jurisdictional status of the waters of Shelikof Strait is not affected in any way by any previous actions on the part of the Interior Department.

It is understood that the Department of State has requested the views of the Department of Justice and the Department of the Navy on the status of Shelikof Strait as inland waters or high seas. It is further understood that the views of these Departments, together with the information contained in Secretary Udall's letter, will be utilized by the Department of State in formulating a reply to Governor Egan's request for a ruling on the status of the Strait.

We shall keep you informed of further developments as we learn of them.

A. F. Rollins

A. F. Rollins

Attachments

Please send copies to Lindsley, Schoning, Shaklee, and Browning.

5/11/62

Act.	Info	To	Init.
		Reg. Dir.	
	✓		
	✓		
		Statistics	

COPY

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

APR 20 1962

Dear Mr. Secretary:

The State of Alaska is contending as a basis for the seizure of the Japanese fishing vessel, Shoichi Maru No. 7, that the Department of the Interior, during its administration of fishing in Alaska, treated Shelikof Strait as inland waters. You have requested our advice as to the validity of this contention. We find no evidence to indicate that this Department or its predecessor in function, the Department of Commerce, ever asserted territorial jurisdiction as against any foreign national over the waters of Shelikof Strait more than three nautical miles from the Alaska Peninsula and Kodiak and adjacent islands.

For many years prior to Alaska statehood, the Department of the Interior and the Department of Commerce managed the commercial fishery resources of the Territory. These management functions were established by the Act of June 6, 1924 (43 Stat. 464, 48 U.S.C. 221), popularly known as the White Act. In December of 1924, the Department of Commerce adopted regulations to implement this Act, delineating certain fishing areas within which fishing was limited or prohibited (Department Circular 251, 11th Edition, Department of Commerce, December 2, 1924).

Article VI defined the Kodiak area as follows:

> The Kodiak area is hereby defined to include the waters of the [illegible] inland shore extending from Cape Douglas southeastward to Cape Ikolik and the territorial coastal and [illegible] waters of Alaska [illegible] adjacent islands, but excluding the waters enclosed within the Kodiak Forest and Fish Culture Reserve established by presidential proclamation of December 24, 1892. (Emphasis supplied.)

This definition was carried forward without relevant change in successive revisions of the regulations through 1959. The references to waters of the [illegible] coastal waters [illegible] and the term defensible evidence the Department's intention to limit the regulatory activities under the White Act to

those waters within the three-mile limit recognized as established American law. This language negates any assertion of jurisdiction over the entire waters of the Strait.

In 1956 this Department adopted new regulations defining the term "waters of Alaska" and redefining the Kodiak Area. The definition of "waters of Alaska" read as follows:

> For the purpose of these regulations, the term "waters of Alaska" north and west of the International Boundary at Dixon Entrance are defined as including t... ... extending 3 miles seaward (1) from the coast, (2) from lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and (3) from any island or groups of islands, including the islands of the Alexander Archipelago, and the waters between such groups of islands and the mainland. (50 CFR 101.19, July 20, 1956; 50 CFR 101.20, March 7, 1959.)

The Kodiak Area was newly defined to include all waters from Kilokak Rocks to Cape Douglas, including Kodiak, Afognak, and adjacent islands. (50 CFR 103.1, April 21, 1956.) This definition was modified slightly in 1957 to insert the words "... waters of Alaska" in place of "all waters." (50 CFR 103.1, April 5, 1957.)

The regulations containing these new definitions of "waters of Alaska" and of the Kodiak Area were in force in only three fishing seasons--1957, 1958, 1959. During the previous thirty-two years the regulations had clearly excluded those waters of Shelikof Strait beyond the three-mile limit. In any event, these regulations defined fishing districts for management purposes only and were not intended to enlarge or extend the territorial waters of Alaska in a legal or jurisdictional sense.

So far as we can ascertain the regulations have never been invoked against any foreign fishing vessel. The White Act, under which the regulations were issued, does not provide that it shall be applicable to foreign vessels or nationals. The Act of June 14, 1906 (34 Stat. 264; 48 U.S.C. 251-257) had already prohibited alien persons from fishing for any species of fish "in any of the waters of Alaska under the jurisdiction of the United States" except by use, by line, or gaff. The laws of the United States since 1793 had restricted fishing in American waters to vessels of the United States (46 U.S.C. 251). Since the problem of fishing by aliens had already been dealt with by these acts, the White Act was directed only to regulate fishing by

United States citizens within the territorial waters from which aliens had, for all practical purposes, already been excluded. Any regulations promulgated under the White Act could not therefore be considered under any circumstances to be an assertion of territorial jurisdiction against foreign nationals.

The contention of the State of Alaska that the Department of the Interior has considered Shelikof Strait as historic inland waters is not supported by any evidence known to this Department. The Department has never, to our knowledge, excluded foreign vessels from the Strait.

It is our conclusion, therefore, that the status of Shelikof Strait as respects jurisdiction over its waters is not affected in any way by any previous actions on the part of this Department.

Sincerely yours,

(sgd) Stewart L. Udall

Secretary of the Interior

569-731 O - 76 - 15

Mr. Saudek.

U. S. EXHIBIT NO. 101

6-10-57

June 11, 1957

Director, Bureau of Commercial Fisheries, F. ,
Washington, D.C.

Acting Administrator, Alaska Commercial Fisheries, F. , Juneau, Alaska

Offshore Fishing - Alaska

Reference is made to Mr. Facchetti's subject memo of March , 1957. Attached under separate cover are overlays of [illegible] Bristol Bay area which show the one enclosed of the correct base line from which waters of Alaska should be determined.

In studying these proposed base lines the following principles should be considered:

(1) They do not represent the outer limits of territorial waters but are only the base from which outer limits are determined.

(2) We have attempted both to protect existing fishing in offshore area from seizure and to prevent the development of new such fisheries.

(3) [illegible] lines have been drawn to eliminate [illegible] orders. Actually it will be possible for the Secretary of the Interior to establish closed areas to the enlargement of our present territorial fisheries.

(4) Although relatively large areas of open water are controlled under [illegible], enlargement of our fisheries will be accomplished under controlled procedures.

(5) In drawing base lines, International waters will not be [illegible].

The overlay presents but a few [illegible] to [illegible] minor errors. However, the overlays may not be used for the base points indicated on charts [illegible] charts as discussed below:

(a) U.S.C.G.S. No. 2 (Alaska Peninsula and Aleutian Islands). (January 5, 1957). There [illegible] to be a [illegible] [illegible] Chart No. [illegible] [illegible] an limit but [illegible] to No. 2.

(b) U.S.C.G.S. 8502, Page St. Hills to Shumagin Islands) October 25, 1956). You will note two alternate lines between Cape [illegible] Hills and [illegible] Island. The solid line was our first

estimate but, upon further study of the flight, it was decided that in some years of entitled weather the deeper water [illegible] than the open ocean beyond the [illegible] for as far as ten miles. In view of our adopted principle (3) above, we recommend that the base line [illegible] follow the dotted one on the overlay.

We have drawn the base line from Cape [illegible] Island to [illegible] Point, and then have included all waters surrounding Nelson Island and the waters of Kashimof Strait. Fishing by our nationals within each Inlet and Kashimof Strait can be controlled through regular management procedures.

There is an existing Canadian halibut fishery in Kashvik Bay and various bays along the north side of Kashimof Strait. Our proposal is concerned with management of our salmon net fishery, but the Canadian halibut fishery should probably also be given consideration.

(3) U.S.C.G.S. 8502 (Alaska Peninsula and Aleutian Islands to Segum Pass) (March 9, 1955). The purse seine fishery in Ikatan Bight on the south side of Unimak Island would be eliminated within a distance of three miles from the base line we have drawn it. The purse seine fishery off Bear River on the north side of the [illegible] near Port Heiden would also be so eliminated. You will note a double line across Bristol Bay, roughly between Cape Menshikof and Cape Newenham. The dotted line is the present boundary of the area of management district. Since our base line represents the base from which the outer limit of fishing is measured, the solid line has been set three miles west of the Bristol Bay management line. Gill-netting by non-locals in Bristol Bay area fishing is restricted to specified local areas.

(4) U.S.C.G.S. 8502 (Amatuli Island to Unga Island) (November 10, 1951). This carries our proposed base line only out to 175 degrees west longitude.

(5) U.S.C.G.S. 8502 (Spring Bay) (September 15, 1950). North of Bristol Bay, Alaska salmon fishing exists [illegible] the Nushagak and Kuskokwim Rivers. Any other salmon fishing in the area is negligible and knowledge of salmon runs in the more northern rivers is relatively slight. The base line in this area, as we have drawn it, is designed primarily to prevent any future development of offshore salmon net fishing.

(6) U.S.C.G.S. 8502 (Arctic Coast of Alaska) (August 11, 1952). Any existing salmon commercial fisheries are negligible and knowledge as to the potential of this area is slight. We have drawn the base line.

2

BEST COPY AVAILABLE

across the mouth of Ketchikan Sound recognized; there may some day develop a salmon or other commercial fishery within the Sound. The rest of the line should be the Canadian boundary has been drawn to pretty much follow the surf line.

We have not consulted the fishing industry in any respect concerning our proposed line; it has pertained only the thinking of members of our staff. Should you deem it proper, it might be well to discuss the matter at our public fishery hearings this fall to solicit further advice and to publicize what is being done.

C. RICHARD GIBBS

cc: Charrett
Scudder
Kimsley

PX 103

January 29, 1960

Mr. C. L. Anderson, Commissioner
Alaska Department of Fish and Game
229 Alaska Office Building
Juneau, Alaska

Dear Andy:

In response to your request of January 8, 1960, I am sending under separate cover, overlays of charts delineating the base-line along the Alaska coast from which we established the "Waters of Alaska" as defined in the Bureau of Commercial Fisheries Code, section 191.20, which was effective prior to transfer of management responsibilities to the State.

We have only one set of original charts showing such base-line from which the overlays are traced. We will keep these on file and make them available should you wish to inspect them. In drawing this base-line we believe that we have included all existing Alaska along shore salmon net fisheries.

This information was submitted to Canada upon their request for information concerning section 140.10 of our regulations, and was submitted with the explanation that this was the manner in which the regulations applied to U.S. fishermen. We definitely avoided any reference to International or Territorial waters.

I might add that we have not had occasion to make any arrests for violation of these regulations.

If you have any further questions on this matter, I will be pleased to discuss them with you.

Sincerely,

John T. Charrett
Regional Director

cc: Director, BCF, Washington, D.C.

JTCharrett:jn

PX 104

第　次航　昭和37年4月4日　時(　曜)

Voyage No　　Day. The 4th of April 1962

Total Miles	Hours	Miles	Course	Deviation	Winds Direction	Winds Force	Weather	Vis.	Barometer	Temp. Air	Temp. Sea	Log Rdg.	Remarks
	1												
	2		Drifting		SE	4	f		997.0	3.0			
	3												
	4				SE	4	b.c		998.5	3.0	3.5		
	5												
	6		Drifting		SE	2	c		1004.0	4.0			
	7	0.3	S.E.										
10.1	8	5.8	"		ESE	3	c		1002.7	5.0	3.5	1071	
	9	5.5											
	10	2.0	"		ESE	3	c		1005.0	6.5			
	11												
9.5	12		Drifting		SE	3	c		1004.0	6.0	4.0		
	13												錨泊位置 Anchor Position
	14		Drifting		East	3	c		1003.5	7.5			
	15	2.5	shifting										
8.0	16	6.3	Drifting		East	3	c		1004.0	5.5	4.0		
	17												残有量 Remained
	18		Drifting		ENE	3	c		1010.0	7.0			Coal or Oil 97.0 tons 118,443 gls
	19												Ballast Water 13.0 tons
	20				ENE	2	c		1011.2	4.0			Drinking Water 77.5 tons
	21												一日消費量 Daily Consumption
	22	5.0	Drifting		NE	2	c		1012.0	4.0			Coal or Oil 2.0 tons 3.5 tons
	23												Ballast Water 2.0 tons
5.0	24				E	3	c		1012.5	4.0	3.5		Drinking Water 1.0 tons

Noon Position — Latitude N 56°-54' Longitude W 153°-21'

Course: Coasting

24 hr Run: 24 hr 10 m / 12 hr 54 m

Distance Steamed: 18.0

Average Speed: 7.6

Run by Log:

Average speed by Log:

R. P. M: 131.0

Slip: 17.2%

Sounding of Tanks & Bilges

			F.P.	Deep F.W.	Eng.	A.P.	Deep F.W.	1	2	3	4	5	6	7
燃料油槽 Fuel Oil Tanks	午前 A.M.	P												
		S												
Ballast Tank	午後 P.M.	P												
		S												
			1	2	3	4	5	6	7					
汚水槽 Bilges	午前 A.M.	P												
		S												
	午後 P.M.	P												
		S												

二航海の合計 Total from to

Distance under Weight: 13°-02'-11"

Distance Steamed: 4°-22'-36"

Time Under Way: 923.0

Average Speed: 7.78

Distance by Log:

Coal or Oil Consumed: 57.5 tons

Water Consumed: 15.3 tons

Water Consumed: 265 tons

Draft: F — A — M

31

自　　港 至　　港　　港錨泊

From　　To　　Lying at 7.9

Used eng' sometimes shifting mid-ships

16th Moderate breeze. fine and cloudy 12 sea moderate.

16 1/2 P.M. 16th Started eng' on rd. marching two & a half points of the all catcher-boat.

17th Light breeze, cloudy 7 sea smooth.

1 AM Stopped eng' & Drifted.
1 1/2 Lay side Hayasawa-Maru No 2 for supplying F.O. & D.W.
11 Shuttle bridge Chuyo-Maru No 61 & No 62
12 Hayasawa-Maru No 2 left her.
12 1/2 Used eng' making wind-board & Drifting

1st Gentle breeze & cloudy 12 sea slight

6th Got alongside Hayasawa-Maru for supplying F.O. & D.W.

8th Cast off Hayasawa-Maru.
10th Got alongside Chuyo-Maru No 61 for supplying F.O. & D.W.

20th Light breeze & cloudy N, sea smooth.
(46°-02'N 161°-26'W)

21st 1/2 Cast off Chuyo-Maru No 61
23rd Used eng' making wind-board after drifting

AM Gentle breeze & cloudy N. sea slight

Course made, 40 miles.

Chief Officer　　Captain

第　次航　昭和37年4月5日　時(曜)

Voyage No　　Day. The 5th of April 1962

Time Hours	Time Min.	Miles	Course	Deviation	Direction (Winds)	Force	Weather	Vis.	Barometer	Temperature Air	Temperature Sea	Eng Rev.	Remarks
	1		Drifting										
	2				NE	2	F		1012.5	3.0			
	3												
5.5	4	5.5			NNE	3	C		1013.5	3.0	3.5		
	5		Drifting										
	6	4.3	45°		NNE	2	F		1014.0	5.0			
	7	8.3	"										
29.5	8	12.3	"		NNE	2	C		1014.5	7.0	4.0	149.5	
	9	7.5	"										
	10	7.5	"		NNE	3	C		1014.5	7.0			
	11	7.0	45										
22.0	12		Drifting		NNW	3	C		1014.8	5.0	4.5		
	13	7.5	" 01										錨泊位置 Anchor Position
	14	8.5	" 19		North	4	2C		1014.0	1.0	4.0		
	15	8.8	"										
34.1	16	8.5	"		NNW	3	8		1013.5	7.0	4.0	181.3	
	17	7.0	19										残有量 Remained
	18	7.7	"		NNW	3	8		1013.0	7.0			Coal or Oil A.O 136.3 Tons, D.O 7,620 L
	19	7.0	"										Boiler Water 16.0 T
30.0	20	8.0	"		NNW	3	8		1012.8	6.0	4.0	172.5	Drinking Water 45° 715 T
	21	8.0	" 300										日消費量 Daily Consumption
	22	7.7	"		NNW	4	8		1012.5	5.0			Coal or Oil B.F. 6,140 Bls, A.O 25 L
	23	5.5	"										Boiler Water 2.0 T
22.0	24	0.0	"		NNW	4	8		1012.3	5.0	4.0		Drinking Water 1.0 T

Noon Position — Latitude S 57° 19' N, Longitude W 52° 21' W

Sounding of Tanks & Bilges

		F.P.	Deep	F.W.	Bag	A.P.	Dry	1	2	3	4	5	6	7
清水 F.W.	A.M.	P												
		S												
Ballast Tank	F.W.	P												
		S												
								1	2	3	4	5	6	7
燃油 Oil	A.M.	P												
		S												
Bilge	F.W.	P												
		S												

Total from to

Noon Position	14h-02m-35s
Run	15h-06m-06s
Steaming Time	985.0
Average Speed	7.81
Coal or Oil Consumed	61,939 L
	538 L
Water Consumed	19.3 T
Water Consumed	23.51

	Draft
F	F
A	A
M	M

自　港　至　港　港錨泊

From　　To　　Lying at　F. Gt

32

Head eng' sometimes moving Wind a'hard after drifting.

10th Gentle breeze, cloudy & sea slight.

at 12 3/5 ob Stopped eng' commenced searching fish groups following with all catcher boat.
Co 45°

18th Light breeze, cloudy & sea smooth.

0th Co 45°
11th Stopped eng' after drifted for waiting Daiyo Maru No 61 owing to slow its eng' speed.

Noon Gentle breeze. cloudy & sea slight.

2nd Started eng' resumed searching fish groups.
Kodiak east coast. Co 120°
12th 3/10 to 61° 13th 3/10 to 18°

18th Gentle breeze & blue sky & sea slight.

20th Gentle breeze, blue sky & sea smooth.
(52°-09'-W 57°-16'-N)

21st 3/10 to 360°
Continued sucking fish groups through the night.

N.N. Mod' breeze & blue sky & sea mod'
Rounds made, all's well.

Chief Officer　　Captain

第　　次航　昭和 37 年 4 月 6 日　時(　曜)

Voyage No　　Day. The 6th of Apl 1962

Total Miles	Hours	Miles	Course	Deviation	Winds Direction	Winds Force	Weather	Via	Barometer	Temp. Air °C	Temp. Sea °C	Engine Revs.	Remarks
	1	8.0	0°										
	2	7.2	"		NNE	4	C		1012.3	5.0			
	3	8.1	"										
30.5	4	7.2	"/289°		NNE	4	C		1013.5	5.0	4.0	170.3	
	5	6.6	289°										
	6	6.6	"		WNW	4	C		1016.0	7.0	4.0		
	7	3.7	"										
74.4	8	4.5	"		WNW	4	C		1012.0	7.0	4.0	170.3	
	9	7.0	"/270°										
	10	7.5	"		W	6	C		1018.0	5.0	4.0		
	11	7.5	"/301°										
30.0	12	8.0	"		SE	7	C		1020.0	4.0	4.0	173.4	
	13	8.4	"										錨泊位置 Anchor Position
	14	9.7	"/88°		SE	4	C		1022.0	8.0			
	15	9.5	"										
37.9	16	8.8	"		ENE	4	C.C		102.0	6.0	4.0	181.1	
	17	8.2	242°										残量 Remained
	18	0.7	/88°		SSE	2	C		1022.0	8.0	4.5		Fuel oil on A 9.597 t
	19		Drifting										Water 15.0 t
38.6	20				SSW	2	C C		1023.2	4.0	3.5		Drinking Water 30.5 755 t
	21												一日消費量 Daily Consumption
	22		Drifting		SW	3	C C		1023.0	4.0			Fuel oil P.S. 5.1 20 Kl
	23												A 1.0 23 t
	24				SSW	4	C		1023.0	4.0	3.0		Water A 1.0 t
													Drinking Water 1.0 t

Noon Position Latitude	Longitude
Obsd 5° 52'	152° 58' W
DR	
Run by Log	24.0 m
Run by Dr	23.5 m
Diff	164.0'
Av. Speed	6.83'
D. Run by Log	
Av. spd by Log	
Set & Drift	
True & Mag. Courses	
R.P.M	167±
Av. R.P.M	21.0

Coasting

Sounding of Tanks & Bilges

			F.P.	Deep	F.W.	Eng.	A.P.	F.O.	1	2	3	4	5	6	7
Ballast Tank	A.M.	P													
		S													
	P.M.	P													
		S													
			1	2	3	4	5	6	7						
Fuel Oil Tank	A.M.	P													
		S													
Bilge	P.M.	P													
		S													

二港間の合計 Total from to

Miles	15-2-30
Hours	4-05-57
Fuel Oil	1149.0
Av. Speed	7.66
D. Run by Log	
Av. Speed by Log	
Fuel Oil Consumption	67.0 t
Water A	3.0 t
Drinking Water	2.5 t
Draft	F / A

日　　港位　　時　　碇泊中　　33

From　　To　　Lying at 7.G

0300 Wind to ESE

0800 Moderate breeze & fine sky 1/10 sea moderate.

Continued sucking fish jumps.

2000 Moderate breeze & fine sky 1/10, sea moderate.

0900 Ushagat N. cape on 184° dist 10.0 Miles.
Wind to ESE

1000 Wind to East

Noon Moderate breeze & fine 1/10 sea rough.

1300 Wind to NE

1600 Moderate breeze fine but cloudy 1/10 sea moderate.
Wind to East

1800 Stopped eng. after drifting

1200 Get alongside Shoshi Maru no 7 at 58°02'N 153°00'W for supplying F.O & F.W.

2000 Light breeze & fine but cloudy 1/10 sea smooth
(58° 06'N 152° 38'W)

2000 Cast off Shoshi Maru no 7

2100 Get alongside Dairyo Maru to repairing eng.

Continued repairing Dairyo Maru eng through night

0400 Wind to E Light breeze & fine but cloudy 1/10 sea moderate
Towing vessel Dairyo Maru

Chief Officer _____　　Captain _____

第　次航　昭和 27 年 4 月 7 日　時（　曜）

Voyage No　　Day. The 7th of April 1952

時 Hour	分 Min.	航程 Miles	針路 Course	自差 Deviation	風向 Directions	風力 Force	天候 Weather	視程 Vis.	気圧 Barometer	気温 Temperature Air	気温 Temperature Sea	上甲板乾湿 Dry or Wet	摘要 Remarks
	1		Drifting										F.W
	2				SSW	6	R		1023.0	3.5			No 6 Shoichimaru
	3												Supp'd 4.0 t
	4		)		SSW	4	Cu c		1023.0	3.0	3.5		F.O
	5												No 6 Shoichimaru
	6	1.0	Var'		SSW	5	C		1022.0	4.0			Supp'd 439 bbls
	7	3.8	"										
	8	2.0	"		ESE	4	C		1025.0	2.0	3.0		
	9												
	10	1.0	Drifting		SSW	3	C		1025.0	4.0			
	11	1.5											
4.1	12	4.0	Shifting		SSW	4	C		1025.0	4.0	3.5		
	13		Drifting										錨泊位置 Anchor Position
	14				SSW	3	C		1025.0	3.0			
	15												
	16		)		SSW	3	C		1024.0	4.0	4.0		
	17												残存量 Remained
	18		Drifting		SSW	2	Cu c		1024.0	4.0			重油 Coal or Oil 21 F.O 41.270 KL / D.O 1.572
	19												缶水 Boiler Water 130 t
	20		)		SSW	2	Cu c		1024.0	4.0			飲料水 Drinking Water 65.0 / 25.5 71.5 t
	21												一日消費量 Daily Consumption
	22		Drifting		SW	1	Cu c		1024.0	4.0			重油 Coal or Oil 21 F.O 2.260 KL / D.O .25
	23												缶水 Boiler Water 2.0 t
	24				SSW	1	Cu c		1024.0	3.0	4.0		飲料水 Drinking Water 1.0 t

Noon Position

Latitude 27°-51', Longitude 58°-0'W

Course Coasting

Dist. made good 24h-10m

Dist. run 4°-42'

D. Run 84.0'

Av. Speed 3.5 t

Run by Log

Av. spd. by Log

Curren. direction

Force

R. F. M

Ship's

Sounding of Tanks & Bilges

		F.P.	Deep F.W.	Eng.	A.P.	S.W.	1	2	3	4	5	6	7
喫水 Draft	A.M.	P											
		S											
Ballast Tank	P.M.	P											
		S											
			1	2	3	4	5	6	7				
喫水 Draft	P.M.	P											
		S											
Bilge	P.M.	P											
		S											

航海日誌の合計 Total from to

Time under Weigh 6d-02h-35m

Hours Towing 0d-15h-21m

Total Dist. Run 1248.0

Av. Speed 7.7 t

Dist. Run by Log

Av. Speed by Log

Coal or Oil Consumed F.O 72.010 KL / D.O 57.2 t

D. Water Consumed 21.3 t

B. Water Consumed 21.5 t

Draft

F

A

M

34

自 From　港 　至 To　港 　港泊中 Lying at 7. C.

4h Fresh breeze & fine wet cloudy sea rough

8h Cast off Liverpool Stone wall
10h Weighing nothing in sight

12h topped eng after drifting
4h mod' brze & cloudy sea mod'

now Mod brze & cloudy sea mod'

8h spk Liverpole Liverpool Stone wall repairing eng' waiting to eng' accident repair.

12h Gentle breeze cloudy sea slight

4h provided repairing eng' Liverpool Stone wall Cast off.

Captain Drifting.

12h Light breeze & fine wet cloudy sea smooth.
(68°-06'W 27°-51'N)

4h Light airs & fine blue sky cloudy with detached cloudy sea very smooth.

Sounds water all well.

Chief Officer　　Captain

第　次航　昭和27年11月2日　時(　曜)

Voyage No　　Day. The 5th of Nov 1952

Total Miles	Hours	Miles	Course	Deviation	Winds Direction	Winds Force	Weather	Via	Barometer	Temp. Air	Temp. Sea	Long. Diff.	Remarks
	1												
	2		Drifting		South	3	C		1023.0	3.0			
	3												
	4				South	4	C		1022.5	2.0	2.5		
	5												
	6	6.5	225°		SSW	4	C		1022.0	3.0	3.5		
	7	9.5	"										
17.2	8	6.2	"		SSW	4	R.C		1022.5	3.0	3.0		
	9												
	10		Drifting		SSW	4	R.C		1023.0	3.0			
	11	4.5											
4.5	12				SSW	4	R.C		1022.5	5.0	4.0		
	13												
	14		Drifting		SW	3	R.C		1022.0	6.0			
	15												
	16				SW	3	R.C		1021.5	9.5	8.5		
	17												
	18		Drifting		SSW	1	R.C		1021.5	7.0			
	19												
	20				ESE	1	R.C		1022.0	5.0	4.0		
	21												
	22		Drifting		ESE	1	C.C		1023.0	4.0			
	23												
	24				South	1	C.C		1023.5	4.0	5.0		

Remarks

Anchor Position

Remained
Coal or Oil F.O 52710 M/T, L.O 1.357 L
Water Ballast 115 T
Drinking Water 44.0, 24.5 1952

Daily Consumption
Coal or Oil F.O 2,490 M/T, L.O 15 L
Water Ballast 1.5 T
Drinking Water 1.0 T

Noon Position — Latitude 57°-37'N, Longitude 153-52E

Course: resting

Run: 24K →0mm, 2K →42mm

D. Run 22.0

Av. Speed 8.15

T. Run by Log 197.3

Av. Speed by Log 20.4

Error of Compass

Current direction

Sounding of Tanks & Bilges

			P	S	1	2	3	4	5	6	7
	午前 A.M	P									
		S									
Ballast Tank	午後 P.M	P									
		S									
	午前 A.M	P									
		S									
Bilge	午後 P.M	P									
		S									

Total from to

Noon Position 17°-12'E-30'
Noon Position 06°-18'E-21'
Run 1265.0
Av. Speed 7.70
D. Run by Log
Av. Speed by Log
Coal or Oil Consumed F.O 73.730 M/T, L.O 515 L
D. Water Consumed 2234
D. Water Consumed 33.5

Draft
F
A
M

35

From　　To　　Lying at F.G.

10ᴴ Moderate breeze & cloudy ᵖᵗ, sea moderate.

1ᴴ started engine & commenced moving about

2ᴴ Stopped engine after drifting

3ᴴ moderate breeze - fine but cloudy ᵖᵗ sea moderate.

All catcher boat commenced sending fish pump

Noon: Fresh breeze & clear sky ᵖᵗ with detached cloudy ᵖᵗ sea mod.

4ᴴ Gentle breeze & fine but cloudy ᵖᵗ sea slight.

Catcher boat 200

8ᴴ Light air & fine but cloudy ᵖᵗ sea very smooth.
(57° 37'N 153° 48'E)

9ᴴ Light air & clear sky ᵖᵗ sea very smooth

Sounds made, all's well

Chief Officer　　Captain

第　次航　昭和37年4月9日　時(　曜)

Voyage No　　Day. The 9th of April 1962

Hours	Miles	Course	Deviation	Direction	Force	Weather	Vis.	Barometer	Temperature Air	Temperature Sea	Remarks
1		Drifting									Boiler water.
2				Calm		C		1023.5	8.0		Supplied 2.0 T
3											
4				SE	2	C		1023.0	8.0	7.0	
5											
6	2.0	Drifting		SSE	2	C		1023.5			
7											
8	2.0			ESE	1	C		1024.0	7.5	3.5	
9											
10		Drifting		East	1	C		1024.0	8.0		
11											
12				ENE	1	C		1024.0	7.0	5.0	
13											Anchor Position
14		Drifting		ENE	1	C		1023.5	3.5		
15											
16				ENE	1	C		1023.0	5.0	5.0	
17											Remained
18		Drifting		NW	1	C		1023.5	7.0		Coal or Oil 84.0 T 3.5 T
19											Boiler Water 12.5 T
20				NW	1	C		1023.3	4.0	3.0	Drinking Water 33 67.5 T
21											Daily Consumption
22		Drifting		NW	1	C		1023.2	3.0		Coal or Oil 3.0 T 3.2 T/H
23											Boiler Water 2.5 T
24				NW	1	C		1023.0	2.5	3.0	Drinking Water 1.0 T

Noon Position

Latitude　Longitude

Obs'd　5°-55N　153-55W

Dead reckoning

Distance run　24-00 m

Course　01°-79 m

Time Underway　3.0

Average Speed　7.58

Average Speed by Log

Total & Current Direction

Sounding of Tanks & Bilges

		F	C	F.W.	Eng.	A. P.	Daily F.W.	1	2	3	4	5	6	7
船首	A.M.	P												
		S												
Ballast Tank	P.M.	P												
		S												
			1	2	3	4	5	6	7					
船尾	A.M.	P												
		S												
Bilge	P.M.	P												
		S												

Total from to

Distance made 1563.0

Average Speed 7.71

Coal or Oil Consumed 33.7 T 60.2

Fresh Water Consumed 2.0 T

Salt Water Consumed 35 T

Draft

F

A

M

日　場所　船　港務的　36

From　　To　　Lying at 7 G

16th Light breeze blue sky & clear sight

17th light breeze blue sky & very smooth

18th Got alongside Neida Harbour
19th Ships Wreche Removed

20th Kept sailing in blue sky & very smooth

21st Light air & blue sky & sea smooth

22nd light air & blue sky & very smooth.
(LAT 01°-19 LONG 160°-02)

23rd light air & blue sky & sea very smooth.
Sunset made distance

Chief Officer　　Captain

第 次航 昭和37年 4月10日 時(曜)

Voyage No Day. The 10th of April 1962

Time	Miles	Course	Deviation	Winds Direction	Winds Force	Weather	Via	Barometer	Temperature Air	Temperature Sea	Eng. Rev.
1											
2		Drifting		NE	1	C		1022.0	3.0		
3											
4				Calm		C		1022.0	3.0	3.5	
5											
6		Drifting		NE	1	C		1022.0	4.0		
7											
8				NE	1	C		1022.0	6.0	3.5	
9											
10		Drifting		NE	1	C		1022.0	6.0		
11											
12				NE	1	C		1021.5	8.0	4.0	
13											
14		Drifting		NE	1	C.		1020.5	5.0		
15											
16				NNE	3	C.		1019.0	4.0	4.0	
17											
18		Drifting		NNE	2	C		1018.0	5.0		
19											
20				NNE	2	C		1018.0	4.0	3.5	
21											
22		Drifting		NNE	2	C		1018.0	4.0		
23											
24				NNE	2	C		1016.5	3.0	3.0	

Remarks: Boiler water Supplied 2.5 T

Anchor Position

Remained

Daily Consumption

Noon Position — Latitude: 57°-55N, 54-02W — Longitude: 24°-05W

Sounding of Tanks & Bilges

Total from to

Draft

From To Lying at F. G

6th Calm & blue slight sea smooth.

7th Light air & blue slight sea very smooth.

8th Light air & blue slight sea very smooth.

9th Gentle breeze & fine but cloudy slight sea smooth.

10th got alongside Hyperion to remove pox & apply same.

11th U.S. ALASKA FISHERY DEPARTMENT OFFICER came on board & by Hydroplane to inspect & in board.

12th They left her: 8th Cast off they remain there yet.

20th Light breeze & cloudy fine & very smooth.

(61°-55'N 18°-06'W)

Mist light breeze & cloudy & sea smooth.

Rounds made, all's well.

Chief Officer Captain

第　次航　昭和 37 年 4 月 11 日　時(　曜)

Voyage No　　Day. The 11th of April 1962

Time	Hour	Miles	Course	Deviation	Winds Direction	Force	Weather	Via	Barometer	Temperature Air °C	Sea °C	Engine Revs
	1											
	2		Drifting		WNW	2	C		1015.0	2.0		
	3											
	4	4.0	295° Drifting		WNW	2	C		1014.0	3.0	3.5	
	5											
	6		Drifting		WSW	2	C		1013.0	2.0		
	7											
	8				SW	1	C		1013.5	2.0	3.0	
	9											
	10		Drifting		SW	1	C		1011.5	6.0		
	11											
	12				SW	1	C		1010.5	7.0	3.5	
	13											
	14		Drifting		WSW	1	A		1009.0	4.0		
	15											
	16				NNE	1	A		1007.5	3.0	4.5	
	17											
	18		Drifting		NNW	2	A		1006.0	0.0		
	19											
	20				NNW	1	A		1006.5	1.0	3.5	
	21											
	22		Drifting		NW	2	A		1004.5	0.0		
	23											
	24				NW	2	A		1004.0	2.0	3.5	

Noon Position
Latitude 57° 57' N　Longitude 15° 00' W

Sounding of Tanks & Bilges

			P	F	Deep	F.W.	Eng.	A.P.	Dry	1	2	3	4	5	6	7
荷倉	0-8	AM	P													
			S													
Ballast Tank	0-8	PM	P													
			S													
				1	2	3	4	5	6	7						
	0-8	AM	P													
			S													
Bilge	0-8	PM	P													
			S													

Remarks

Boiler water Supplied 30 ℔

Anchor Position

Remained
Coal or Oil 75.5 Tons
Boiler Water 15.5 ℔
Drinking Water 68.5 ℔

Daily Consumption
Coal or Oil 2.5 Tons
Boiler Water 1.5 ℔
Drinking Water 1.0 ℔

Total from to
Time under Way 05h-19h
Time Steaming 05h-19h
Run 127.0
Av. Speed 7.7
Coal or Oil Consumed 46.5 Tons
Water Consumed 25.5 ℔
Water Consumed 37.0 ℔

Draft
F
A
M

38

From　　To　　Lying at 7. G.

0h Weather moving wind NNW 2 Slight swell rolling

4h Light breeze overcast sea smooth.

8h Light air overcast sea very smooth.

Noon Light air & shiny sea very smooth.

4h Light air & sunny sea smooth.

8h Light air overcast sea very smooth.
Lat 57°-57 N, 15°-00 W

Mid Light airs & sunny sea smooth.
Soundings made. All well

Chief Officer　　Captain

第　次航　昭和 37 年 4 月 12 日　時（　曜）

Voyage No　　Day. The 12th of April 1962

Total Miles	Hours	Miles	Course	Deviation	Winds Direction	Winds Force	Weather	Via	Barometer	Temperature Air °C	Temperature Sea °C	Engine Revs	Remarks
	1												Boiler water
	2		Drifting		NW	4	5		1003.0	1.0			Supplid 2.0 ton
	3												
	4				NNW	5	7		1003.5	1.5	4.0		
	5												
	6		Drifting		NNW	5	6		1003.5	2.0			
	7												
	8				NNW	4	8.0		1003.0	3.0			
	9												
	10		Drifting		WSW	3	8.0		1003.5	2.0			
	11												
	12				WNW	4	6.0		1003.5	1.0	4.0		
	13												
	14		Drifting		SSW	4	8		1004.0	1.0			
	15												
	16				WSW	4	8		1003.5	1.0	4.5		
	17	4.5											
	18		Drifting		NW	3	8		1004.0	2.0			
	19												
4.5	20				East	2	8		1004.0	2.0	4.0		
	21												
	22		Drifting		SW	3	8		1004.5	0.0			
	23												
	24				SSW	3	8		1004.5	0.0	4.0		

Anchor Position

Remained
Coal or Oil　320 tons 37.490 tons
L.O　9.115 L
Boiler Water　10.5 ton
Drinking Water　42.0 / 1.0 t　14.5 ton

Daily Consumption
Coal or Oil　320 tons − 309 tons = 7.0 tons
Boiler Water　1.0 ton
Drinking Water　2.0 ton

Noon Position
Latitude　Longitude
Obs'd　37° - 47' N / 158° - 48' E

24hr - 00min

Sounding of Tanks & Bilges

			F.P.	Deep P.W.	Eng.	A.P.	1	2	3	4	5	6	7
Ballast Tanks	A.M.	P											
		S											
	P.M.	P											
		S											
			1	2	3	4	5	6	7				
A. W.	A.M.	P											
		S											
Bilge	P.M.	P											
		S											

Total from to
Time Steamed　1st - 12th = 12720
Av. Speed　7.79
Coal or Oil Consumed　37.490 − 33.710 = 3.780 t
Water Consumed　39.0 t

Trim A. P. M.　Draft F. A.
Current direction

自　港　至　港　港費泊　　39

From　　To　　Lying at　T. C.

6th Fresh breeze & raining W. sea rough.

8th Fresh breeze & fine but cloudy W. sea slight.

10th Moderate breeze & fine but cloudy W. sea moderate.

12th Heaving & Coasting shifting wind sea ↑.

16th Moderate breeze & blue sky W. sea moderate.

18th Stopped engine after drifting.

20th Light breeze & blue sky W. sea smooth.
(L) 47° 48' N 158° 48' E

21st Light breeze & fine sky W. sea smooth.
Sounds made all 3 wells.

Chief Officer　　Captain

Voyage No

Day. The 13th of July 1912

Drifting

Drifting

Drifting

Drifting

Drifting

Drifting

Drifting

Drifting

Noon Position
Latitude
Longitude

Sounding of Tanas & Sugen

Tons from to

From To Lying at F. G 40

16th fresh breeze & dirc sharp & sea smooth.

20th Light breeze, clear sharp & sea smooth.

11 30 Head sail wearing & sind-ward.
11 45 Stopped sail after drifting.

21st Light air. fine. & sharp & sea very smooth.

16th Gentle breeze & dirc sharp & sea slight.

16 11 Clocked sail & commenced steering E.N.E. course.
16 11 Stopped sail after drifting

17th Got alongside Chee-Foo. 1st Cast off Chee-Foo

20th Light breeze & dirc sharp & sea smooth.
(40° - 09 & 42° 6' 0")

22nd Gentle breeze & fine. & sharp & sea slight

2 hands made 1/6 a day

Chief Officer

Captain

第 次航 昭和37年 4月 14日 時(曜)

Voyage No Day. The 14th of April 1962

Total Miles	Hours	Miles	Course	Deviation	Winds (1) Direction	Winds (2) Force	Weather	Vis.	Barometer	Temperature (1) Air °F	Temperature (2) Sea °F	Engine Revs.	Remarks
	1												
	2		Drifting		South	3	C		1005.5	1.0			
	3												
	4				South	3	C.U		1004.5	1.0	3.0		
	5												
	6		Drifting		South	3	C.U		1003.0	3.0			
	7												
	8				SW	2	C.U		1002.0	4.0	3.0		
	9												
	10		Drifting		SW	1	C.U		1001.0	4.0			
	11												
	12				SW	1	C.U		1001.5	4.0	4.0		
	13												
	14		Drifting		Calm		C		999.0	7.0			
	15												
	16				NNE	1	C		997.5	4.0	4.0		
	17												
	18		Drifting		NNE	1	C.U		997.5	2.0			
	19												
	20				Calm		C.U		997.0	4.0			
	21												
	22	2.5	Drifting		Calm		C		997.0	2.0			
	23												
Brd	24				Calm		C		997.0	2.0	3.5		

Noon Position — Latitude: 5° 1K' — Longitude: 153-32E

Distance Made	24 M - 00 M
Total Distance	66 M - 27 M
Average Speed	2.6
Days Run	2.27

Sounding of Tanks & Bilges

			P.P	Deep T.W	Bag	A.P.T	1	2	3	4	5	6	7
F.W.	A.M.	P											
		S											
Before Tank	D.B.	P											
		S											
			1	2	3	4	5	6	7				
F.W.	A.M.	P											
		S											
Ship	D.B.	P											
		S											

Remained

Fuel Oil	M/T	309 T.
Water	T	14.0
Drinking Water	T	12.5

Daily Consumption

Fuel Oil	M/T	3.5
Water	T	1.5
Drinking Water	T	1.0

Total from to

	23°-02'-5E
	5°-28'-1S
	1279.0
	778
P	P/S 1/P
S	2.9
	41.5
C	Draft
P	P
S	S

Anchor Position

41

自 港 至 港 碇泊地 From To Lying at F. G.

04th Gentle breeze & fine cut cloudy S.E. sea slight.

08th Light breeze & fine cut cloudy N.E. sea smooth.

10th Got alongside Clan Alpine.

Noon Light air & fine cut cloudy S.E. sea very smooth.

16th Clan Alpine left her.

16th Light air & cloudy S.E. sea very smooth.

20th Calm & fine cut cloudy S.E. sea very smooth.
(5°-01'N 153°-46'E)

21st Got alongside "Teal" U.S.A F.D.C Fishing Inspection Boat & came on board some FISHERY DEPARTMENT OFFICER.
23rd Cast off "Teal" Captain went together by reason of speak territorial waters. & Clan Alpine. Daingo Maru No.61 were suspected of speak territorial waters also arrested.
Calm & fine S.E. sea very smooth.

Chief Officer _____ Captain _____

第　　次航　昭和37年 4月1日　時(　　)

Voyage No　　Day. The 1st of April 1962

Total Miles	Hours	Miles	Course	Designate	Winds (Direction)	Winds (Force)	Weather	Visibility	Barometer	Temperature Air °C	Temperature Sea °C	Ship's Rot.	Remarks
	1	10.0	Drifting										
	2			WSW	1	S.C			997.5	0.5			
	3												
100	4			WSW	1	C			997.5	0.5	3.0		
	5												
	6		Drifting	WSW	2	C			997.2	1.0			
	7												
	8			WSW	1	S.C			995.0	2.0	3.0		
	9												
	10		Drifting	WSW	2	S.C			1000.0	4.0			
	11												
	12			WSW	2	S.C			1000.0	4.0	4.5		
	13												Anchor Position
	14		Drifting	W	1	C			1001.0	5.0			
	15												
	16			WNW	2	S.C			1001.5	4.0	4.5		
	17												Remained
	18		Drifting	NW	1	S.C			1002.5	2.0			
	19												
	20			NW	1	S.C			1003	2.0	3.5		
	21												Daily Consumption
	22		Drifting	NW	1	S.C			1004.0	3.0			
	23												
	24			NW	1	S.C			1005.0	2.0	3.5		

Noon Position — Latitude — Longitude

Obsd 5 1° 02N, 52-5/2

Dist. Run 24 2-00 W

Course made 1-35 W

Dist. to Go 120.0

Dist. to Log 8.75

Time & Correct direction W. 11 2E 0.0 15.5°

Soundings of Tanks & Bilges

			1	2	3	4	5	6	7
Fore Hold	AM	S							
	PM	S							
Main Hold	AM	S							
	PM	S							
Deep Tank	AM	S							
	PM	S							

Total from to

From　　To　　Lying at Y. G　　42

Chief Officer executed as proxy for command on account of Captain absence.

Heading sometimes moving ahead & back.

12th Light air & cloudy & sea smooth.

13th Light air & fine and cloudy & sea very smooth.

Noon Kōhō-Maru arrived our fishing ground

13th Got alongside Kōhō-Maru at 58°-04'N 165°-50'W
12th Started loading cargo at No.2 Hatch

16th Light breeze & fine and cloudy & sea slight
1st finished cargo work

17th Cast off Kōhō-Maru.

21st Light air & fine and cloudy & sea very smooth.
22nd Got alongside Shoichi-Maru & received fishing material

23rd Cast off Shoichi-Maru.

24th Light air & fine and cloudy & sea very [illegible]
Rounds made, all's well.

Chief Officer　　Captain

第　次航　昭和37年 4 月 16 日　時(　曜)

Voyage No　　Day. The 16th of April 1962

Total Miles	Hour	Miles	Course	Deviation	Winds (Direction / Force)	Weather	Vis.	Barometer	Temperature Air	Temperature Sea	Error	Remarks
	1	0.5	105°-135°									
	2	10.5	Var.		SW	2	C	1010	0.0			
	3		Drifting									
12.5	4				Calm	0	C	1011	0.0	0.0		
	5											
	6				W.S.W	0	C	1017.0	4.0			
	7											
	8				W.S.W	2	C	1017.5	5.0	3.5		
	9											
	10		Drifting		W.S.W	1	C	1017.5	7.0			
	11											
	12				W.S.W	1	C	1018.2	7.0	3.5		
	13											
	14		Drifting		E.S.E	2	C	1018.0	9.0			Anchor Position
	15											
	16				E.N.E	0	C	1017.5	4.0	3.5		
	17											
	18		Drifting		N.N.E	2	C	1017.5	4.0			Remained
	19	1.8	Var.									
4.3	20	2.0	"		N.N.E	0	C	1017.8	3.0	3.5		
	21	0.5	"									Daily Consumption
	22	1.5	"		N.N.W	2	C.	1017.5	3.0			
	23		Drifting									
5.2	24				N.N.W	2	C.C	1018.0	3.0	3.5		

Noon Position — Latitude 37° 52.4 N — Longitude 154-17.5 E

D.R.	
Run since Noon	24.6 - 00 M
Set & Drift	24.12 M
Var.	20.0
Speed	12.1
Run to Log	
Average Day's Log	
Dep. & Drift	
Tide & Current direction	
R. P. M.	194.7
Slip	3.7 %

Sounding of Tanks & Bilges

		P	1	2	3	4	5	6	7
F.P. Deep									
F.W. Reg.									
A.P.									
Fore Peak									
Double Bottom	P.M.	P							
		S							
Ballast Tank	P.M.	P							
		S							
			1	2	3	4	5	6	7
Double Bottom	A.M.	P							
		S							
Ballast Tank	A.M.	P							
		S							
Bilge	P.M.	P							
		S							

Total from to

Noon-Noon Dist.	25°-02'.3
Noon Position	05°-23'.5
Run Dist.	1313.0
Average Speed	7.7 k
Run to Log	
Log Reading	6911.2
Water Consumed	81.3 T
Water Remained	45.7 T

Draft: F / A / M

43

From　　To　　Lying at　F. G

Hoisting sometimes steering various courses.

0400 Gentle breeze & cloudy, sea smooth.

Hoisting sometimes steering various courses.

0400 Light air & cloudy, sea smooth.

0824 Got alongside fishery inspection boat "Juneau" U.S. fishery department & came aboard our Captain came back aboard.
1000 Cast off "Juneau".
1054 Got alongside Wainyo Maru & supplied No. 2 & provision material.
1149 Cast off Wainyo Maru.

Very light air & cloudy, sea very smooth.

0600 Got alongside Nagadowa Maru & supplied as etc.
1600 Cast off Nagadowa Maru.
1640 Got alongside Nagadowa Maru & supplied as etc.

0400 Gentle breeze & cloudy, sea smooth.
0600 Nagadowa Maru left us.

1800 SBS Hoisting & resumed shifting fishing ground.

2000 Gentle breeze, overcast & sea slight

2100 Stopped eng. after drifting.

NW light breeze & fine but cloudy, sea smooth.

Rounds made. All's well.

Chief Officer　　Captain

PX 107

POUCH | UNCLASSIFIED (Security Classification) | DO NOT TYPE IN THIS SPACE 611.426/10-858

FOREIGN SERVICE DESPATCH

EMBASSY OTTAWA

TO THE DEPARTMENT OF STATE, WASHINGTON. October 8, 1958

Department's A-90, September 27, 1957. OCT 9 - 1958

FOR Info. Only | FILE | SUBJECT: COMMENTS OF CANADIAN DEPARTMENT OF FISHERIES REGARDING REGULATION OF FISHING OFF ALASKA.

The Department's A-90 of September 27, 1957 requested the Embassy to forward to Mr. G. R. Clark, Deputy Minister of the Canadian Department of Fisheries, copies of certain legislation, regulations and charts relating to the regulation of salmon fishing in the North Pacific:

1. Public Law 85-114, approved July 24, 1957,
2. Regulations issued by the Secretary of the Interior on July 25, 1957, and
3. Charts of the North Pacific Ocean off Alaska showing lines upon which the area of the regulation of July 25, 1957 is based.

Enclosed is a copy of a self-explanatory letter dated October 7, 1958, which the Embassy received from the Department of External Affairs expressing the desire of the Canadian Department of Fisheries to have a discussion at the earliest opportunity with appropriate United States officials as to the question of the location of lines limiting fishing off Alaska.

Action Requested: The Department is requested to supply the Embassy in due course with information on which a reply may be based to the Department of External Affairs for the Department of Fisheries.

FOR THE CHARGE D'AFFAIRES A.I.:

(Name and Title)

Delmar R. Carlson

Second Secretary of Embassy

Enclosure:
Copy of letter dated October 7, 1958.

cc: DNA

DRCarlson/acd (Typing) | UNCLASSIFIED

ACTION COPY - DEPARTMENT OF STATE

The action office must return this Permanent record copy to DC/R files with an endorsement of action taken.

611.426/10-858

EMS 858

UNCLASSIFIED (Classification) | Page 1 of | Ref. No. 3 | Dep. No. 341 | Oct. 8, 58 | Rec'd Oct. 9

DEPARTMENT OF EXTERNAL AFFAIRS
CANADA Ottawa,
October 7, 1958.

Dear Mr. Thompson:

In a letter to your Embassy dated October 27, 1957, the Deputy Minister of Fisheries acknowledged receipt of charts of Alaska, prepared by the United States Fish and Wildlife Service, showing the approximate location of certain off-shore fishing boundaries. He stated that his Department would study and forward comments on the location of these lines in relation to similar lines for California, Oregon, Washington, and British Columbia which had been considered and adjusted at the Conference on Coordination of Fisheries Regulations between Canada and the United States, held in Seattle on February 27, 1957.

This study of the Alaska charts has now been made and it would seem desirable to have an opportunity to discuss the location of the Alaska lines with the appropriate United States officials at an early date.

Research was undertaken following the Seattle Conference to determine whether or not the lines delimiting off-shore waters across the Strait of Juan de Fuca (Bonilla Point-Tatoosh Island line) should be relocated on the basis of scientific findings. At the Conference, provision was made to review within two years the results of the research. Since the interested agencies may meet to review research early in 1959, the location of the Alaska fishing boundary line might well be reconsidered at that time.

It would be appreciated if you would advise the United States Fish and Wildlife Service of our desire to discuss the location of the Alaska fishing lines at their early convenience, suggesting that if a meeting is to be scheduled early in 1959 to consider the results of research and the location of the Bonilla-Tatoosh boundary line, this would be an appropriate time to consider the question of the Alaska line.

Yours faithfully,

H. Cadieux
(for the) Under-Secretary of State
for External Affairs

cc: The Deputy Minister of Fisheries,
Ottawa.

Tyler Thompson, Esq.,
Minister,
United States Embassy, Ottawa.

BEST COPY AVAILABLE

71A 6682
Ly 446

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
WASHINGTON 25, D. C.

FET
ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE
→ WFL
U/FW
JUL 26 1957

JUL 25 1957

Memorandum

To: Mr. W. G. Harrington, Special Assistant to the Under Secretary (U/FW), Department of State

From: Commissioner of Fish and Wildlife

Subject: Charts of waters off Alaska

I have reference to your letter of July 12, 1957, to Assistant Secretary Loffler, regarding certain charts of the waters off Alaska, which we have undertaken to prepare for the Government of Canada.

The charts are now being prepared in the Bureau of Commercial Fisheries of this Service. Since considerable work is involved and since the press of other duties has been unusually heavy recently, it is unlikely that the charts will be available for transmittal to Canada before the end of September.

Arnie J. Suomela
Commissioner

By D A Jauregui
Acting

3399

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Herrington

DATE: September 6, 1957

FROM : Mr. Looney WFL

SUBJECT: Charts for George Clark re Alaska Waters.

In talking with Mr. Terry, he agrees that the title of the F&WS charts is bad. The solution he offers is that we cut off the title and paste on a new one. The new one would have reference to one or two sections of Alaska fishery regulations. In other words, the reader could see where the line of demarcation is only by using the chart in conjunction with the Alaska fishery regulations.

This, however, is not only an irrational way of giving a chart to a foreign country but it does not answer Clark's request. Clark's request (attached) is for "a chart showing the definitive lines of the seaward limits of the waters of Alaska". Our request of Fish and Wildlife Service was precisely the same.

It appears that there will be considerable work in correcting these charts in almost any way. Since considerable time has passed and Clark is apparently eager to get them, I suggest we sit down and figure out the most expeditious way we can rectify this.

Enclosure:

Correspondence re charts.

U/FW:WFLooney:ns

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Wm C. Herrington DATE: August 29, 1957

FROM : Warren F. Looney WFL

SUBJECT: FAWS Charts of Waters of Alaska for transmittal to Canada

From the attached memorandum from Mr. Suomela of August 27 you will see that the charts are here and ready for transmittal.

However, I call your attention to the rather unfortunate title of the overlays, the "Proposed Base Line from which to Measure the Three-Mile Limit for Fishery Regulations".

UCH
WFL

IN REPLY REFER ONLY TO THE DIRECTOR, FISH AND WILDLIFE SERVICE

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
WASHINGTON 25, D. C.

U/FW
AUG 28 1957

AUG 2 7 1957

Memorandum

To: Mr. W. C. Herrington, Special Assistant to the Under Secretary (U/FW), Department of State

From: Commissioner

Subject: Charts of waters off Alaska

Reference is made to your letter of July 12, 1957, to Assistant Secretary Leffler and Mr. Janden's memorandum to you of July 25, 1957, subject as above.

I am happy to inform you that it has been possible to complete preparation of the subject charts earlier than was anticipated. I enclose for transmittal to the Canadian authorities, if you deem it appropriate, two sets of navigational charts of the waters of Alaska together with overlays showing the base lines used to determine the extent of the "waters of Alaska" for the purposes of Section 101.19 of 50 CFR.

You will understand that neither these base lines nor the line delimiting the seaward extension of the "waters of Alaska" bears any relationship to lines delimiting the territorial waters of the United States. These lines are drawn solely for the purpose of fishery management.

Arnie J. Suomela

Enclosures

Mr. Harrington September 6, 1957

Mr. Looney

Charts for George Clark re Alaska Waters.

In talking with Mr. Terry, he agrees that the title of the F&WS charts is bad. The solution he offers is that we cut off the title and paste on a new one. The new one would have reference to one or two sections of Alaska fishery regulations. In other words, the reader could see where the line of demarcation is only by using the chart in conjunction with the Alaska fishery regulations.

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Enclosure:

Correspondence re charts.

U/FW:WFLooney:aa

In reply refer to
U/FW

July 29, 1957

Amend
No Pac
Act

Dear George:

I have delayed acknowledging your letter of June 25 in the expectation that when doing so I could send along the requested charts showing the definitive line demarcating the seaward limits of the "waters of Alaska" as this expression is used in the Alaska Fishery Regulations. However, I am now informed by our Fish and Wildlife Service that the pressure of other work will delay completion of the charts and therefore I send this interim reply. The charts in question should be ready sometime this Fall at which time they will be promptly forwarded to you.

I can think of nothing left to be done to complete Canada's part of the agreement at the Seattle Conference.

Sincerely yours,

Wm. C. Harrington
Special Assistant
for Fisheries and Wildlife
to the Under Secretary

The Honorable
George R. Clark,
Deputy Minister of Fisheries,
Ottawa, Canada.

U/FW:FETaylor:ja

Copy

713488

[illegible] 25, 1957.

Mr. W. L. Herrington
Special Assistant for Fisheries
and Wildlife Affairs
International Resources
Department of State
Washington, D.C.

Dear Mr. Herrington:

Re Seattle Conference on Coordination of Fisheries Negotiations

In reading over the Plenary Proceedings of the above Conference, I note that on page 7, paragraph 5, reference is made to an agreement to submit a chart showing the definitive lines of the coastal limits of the waters of Alaska.

In order to complete our record I would appreciate receiving the chart in question as soon as possible. I would also be most happy if you would let me know whether there is anything we have overlooked on our part required to complete the agreement.

Yours very truly,

G. L. Clark
Deputy Minister

DEPARTMENT OF STATE INSTRUCTION

[illegible]
USIA, USFWS

(Security Classification)

FOR OC USE ONLY

NO.A-98 September 27, 1957

SUBJECT: Regulations and charts concerning oceanic salmon fishing.

TO: The American Embassy, OTTAWA

Two copies each of Public Law 85-114 approved July 24, 1957 and the regulations issued by the Secretary of the Interior on July 25, 1957 under that law are enclosed. P.L. 85-114 amends the North Pacific Fishery Act of 1954 by extending the area of the North Pacific Ocean in which the Secretary of the Interior may issue certain fishing regulations. The regulation of July 25, 1957, issued under authority of P.L. 85-114, prohibits salmon fishing by United States nationals except by trolling in certain areas of the North Pacific Ocean.

There are being transmitted under separate cover two sets of charts of the North Pacific Ocean off Alaska showing lines upon which the area of the regulation of July 25, 1957 is based. The charts were requested by Mr. G. R. Clark, Deputy Minister of Fisheries of Canada, and were prepared by the Fish and Wildlife Service of the Department of the Interior.

The Embassy is requested to forward the charts together with the enclosures to Mr. Clark.

DULLES

Enclosures:

1. Two copies P.L. 85-114.
2. Two copies regulations.

SEP 27 1957 P.M.

UNCLASSIFIED

(Security Classification)

DRAFTED BY: U/FWS:FLooney:ss 9/26/57

APPROVED BY: Wm. C. Herrington

CLEARANCES:

DEA

PX 118

No. 72/11--

United States of America

DEPARTMENT OF STATE

To all to whom these presents shall come, Greeting:

I Certify That the document hereunto annexed contains true copies from the files of the Department of State, as follows:

1. Letter from the State of Alaska, dated April 29, 1965 to the Department of State objecting to four Soviet trawlers sighted in waters claimed by the State of Alaska, namely the Shelikof Strait;

2. Letter from the Department of State to the Governor of Alaska dated May 14, 1965 (in reply to the above letter) stating that the United States Government has never asserted any claim to territorial sovereignty over the waters of Shelikof Strait outside the 3-mile limit on either side of the Strait;

3. Letter from the Department of State to the Governor of Alaska, dated May 6, 1965, advising that this interim reply is made to the Governor's letter of April 29;

4. Inter office

4. Inter office memorandum dated May 13, 1965 concerning the wording to be used in replying to Governor Egan of Alaska.

In testimony whereof, I, John N. Irwin II,

Acting Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this seventh

day of January, 19 72.

John N. Irwin II
Acting Secretary of State.

By [illegible]
Authentication Officer, Department of State.

U.S. GOVERNMENT PRINTING OFFICE 16—[illegible]-7

WILLIAM A. EGAN
GOVERNOR

58 09.2 N.
151 46.3 W

M/FW
MAY 3 1965

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 29, 1965

Mr. William C. Herrington
Special Assistant for Fisheries & Wildlife
to the Under Secretary of State
515 2nd Street, N. W., Room 401
State Annex 11
Washington 25, D. C.

Dear Bill:

A potentially explosive situation is developing. On April 27, 1965, the Department of Fish and Game sighted four Soviet trawlers within Shelikof Strait near Shuyak Island at 11:40 a.m., Kodiak time. These vessels were again sighted between 3:30 to 4:30 p.m., by the Department and the U. S. Coast Guard. At this time two of the vessels had departed eastward from Shelikof Strait and the other two were heading north along Shuyak Island as if they too were leaving.

The vessels were identified on the 3:30 flight as:

SRTM 8403 at 152° 40'W, 58° 35'N heading North.
SRTM 8423 at 152° 35'N, 58° 45'N heading East.
SRTM 8401 at 151° 50'W, 58° 40'N.
SRTM 8406 at 151° 50'W, 58° 40'N.

Identification was not made at the 11:40 a.m. sighting, however, one vessel was anchored 2-3 miles off Shuyak Island at 152° 40'W by 58° 30'N. The other three vessels were about eight miles off Shuyak Island in the vicinity of 152° 50'W by 58° 35'N. Two of these appeared to be fishing. The hammer and sickle could be seen on all four vessels.

In view of the claims to these waters by the State of Alaska which have not been denied by the Federal Government and the intense feeling of all Alaskans regarding this, a potentially explosive situation exists if the Soviets continue to invade the waters of Shelikof Strait. It would be appreciated if you would take the necessary steps to so notify the

Soviet authorities and request that their fishing vessels refrain from entering the internal State waters of Shelikof Strait. These waters are generally recognized as extending from the tip of the Kenai Peninsula extending to the northeasterly tip of Shuyak Island thence down the shoreline of the Kodiak group and thence across the Strait from Cape Ikolik to Kilokak Rocks.

I would like to be advised of the results of action you take.

Sincerely,

Bill

William A. Egan
Governor

WILLIAM A. EGAN
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

M/FW
MAY 3 1965

April 29, 1965

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I would like to be advised of the results of action you take.

Sincerely,

Bill

William A. Egan
Governor

May 14, 1965

PERSONAL

Dear Bill:

I am writing with regard to your letter of April 29 on Shelikof Strait, which was acknowledged by Fred Taylor on May 6.

I am informed here that the United States Government has never asserted any claim to territorial sovereignty over the waters of Shelikof Strait or enunciated doctrine there outside of the three-mile belt of territorial sea along the coasts on either side of the Strait. In view of this, I am sure you appreciate that any approach we might make to the Soviets on this matter would have to be based solely on considerations of public sentiment giving rise to a request that they voluntarily refrain from sending their vessels into these waters in order not to upset existing fisheries relationships.

In my opinion an official approach along these lines would almost inevitably require this Government, perhaps in response to inquiries from the USSR, to take a public position concerning the status of the waters of Shelikof Strait. This could be to Alaska's disadvantage with both the Soviets and the Japanese and might even have the effect of stimulating foreign fishing in these waters.

It occurs to me also that a request along the lines you suggest might be against our interests in connection with the renewal of the king crab conflict agreement and other important matters on which we need Soviet cooperation.

The Honorable
William A. Egan,
Governor of Alaska,
Juneau, Alaska.

In view of these considerations it appears to me that the disadvantages of making a move at this time are such as to indicate delay pending further assessment of the situation as it develops. It may be that the incident will not be repeated. Meanwhile, I shall be further considering how we might handle this matter and expect to be in further touch with you.

Sincerely yours,

Wm. C. Herrington
Special Assistant
for Fisheries and Wildlife
to the Under Secretary

Clearances:

L/SFP - Mr. Yingling (subs)

SOV - Mr. Woods (subs)

M/FW:SBlow:mjb 5/14/65

560-731 O - 75 - 18

May 6, 1965

Dear Governor Egan:

In Mr. Harrington's absence on business I am acknowledging the receipt of your letter of April 29 regarding the sighting of four Soviet trawlers near Sitgak Island on April 27. We will take up the subject of your letter with Mr. Harrington immediately upon his return next week and will be in further touch with you.

At first glance we see a number of problems in connection with the request you make. These have to do with political and legal matters, as well as fisheries questions. You may be sure, however, that we understand your problem in this regard and wish to assist in any practicable way.

Sincerely yours,

Fred H. Taylor
Deputy Special Assistant
for Fisheries and Wildlife
to the Under Secretary

The Honorable
William A. Egan,
Governor of Alaska,
Juneau, Alaska.

Clearances: L/SFP - Mr. Yingling (draft)
SOL - Mr. Morgan (draft)

M/FW:SBlow:mjb 5/6/65

DEPARTMENT OF STATE
THE LEGAL ADVISER

May 13, 1965

MEMORANDUM

M/FW
MAY 13 1965

TO: M/FW - Mr. Stuart Blow

FROM: L/SFP - Raymund T. Yingling

It is suggested that the following be used in answer to the substantive part of Governor Egan's letter of April 29, 1965.

> The United States has never asserted any claim to territorial sovereignty over the waters of Shelikof Strait or exercised dominion there outside of the 3-mile belt of territorial sea along the coasts on either side of the Strait. On the other hand, there has been little, if any, foreign fishing in the waters of the Strait. In such circumstances it would not appear to be in the interest of United States fishermen for the United States Government to have to take a public position concerning the status of the waters of Shelikof Strait which might have the effect of stimulating foreign fishing in such waters.

L:L/SFP:RTYingling:edk

THE UNDER SECRETARY OF STATE
WASHINGTON

PX 121

December 22, 1971

Dear Governor Egan:

Thank you for your letter of August 31, 1971 to President Nixon regarding the territorial limits of Alaska and the provisional maps published by the United States showing boundaries for the territorial sea, the contiguous zone and certain internal waters.

These maps, covering the entire coast of the United States, were drawn up and published in response to the Coast Guard's need for charts for guidance in enforcement activities, the requirements of several other Federal agencies, including the Departments of Commerce and Justice, and the requests of foreign governments.

The drawing of these boundaries involved considerations which are fundamental to the policy of the United States Government on the international law of the sea. Accordingly, overall responsibility for the project was given to the Law of the Sea Task Force -- an interagency group composed of representatives of the Departments of Commerce, Defense, Interior, Justice, State and Transportation -- which directed that the lines be drawn in a manner consistent with the provisions of the Convention on the Territorial Sea and the Contiguous Zone and long-standing U.S. policies concerning the interpretation of that Convention. An interdepartmental committee, operating under the authority and direction of the interagency Task Force, then performed the technical task of drawing the precise lines reflected on the maps.

The Honorable
William A. Egan,
Governor of Alaska,
Juneau.

With [illegible] reference to straight baselines, the United States has always avoided their use for reasons related to our national security and, more recently, to the current negotiations on the law of the sea. The President's Oceans Policy recognizes the basic national security objectives involved in our international law of the sea efforts, and those objectives are foremost in the consideration of policy such as that concerning the drawing of maritime boundaries. In particular, the Executive Branch has considered the preservation of freedom of navigation and overflight in ocean areas a matter of utmost importance, and we have thus consistently avoided any action which would encourage expanded jurisdictional claims in such areas by other countries. Straight baselines have been misused by many countries to enclose significant parts of the high seas. The United States has consistently avoided any use of straight baselines in order not to undermine our refusal to accept them as used by other countries, and in order to avoid encouraging other countries to expand their claims to the high seas.

The maps published in April of this year were thus produced in accordance with carefully developed policy. However, each map bears the caveat that the lines are provisional and are subject to change through amplification or revision of the underlying data or a reinterpretation of the legal principles involved. We have not precluded a change of policy but it should not be thought that our present policy, which the U.S. Government has followed consistently over the years, was determined lightly.

We would be happy to consider any suggestions and recommendations that you or others may wish to make on the policies we have followed and particularly their specific application in connection with the maps that have been issued. In this connection, in your letter you also raised the question of historic bays. Article 7(6) of the Convention on the Territorial Sea and the Contiguous zone refers to such bays. In order to meet the international standard as a historic bay, the following conditions must be met:

(1) there must have been an open, notorious and effective exercise of authority over the bay by the coastal nation;

(2) that exercise must have been continuous;

(3) the exercise must have had the acquiescence of foreign nations.

If you believe that any Alaska bays satisfy those requirements, we would welcome receiving a statement of your views and all relevant supporting information. The Law of the Sea Task Force will review the situation with respect to any particular bay in light of relevant information you may wish to submit.

You suggested in your letter that actions were taken in violation of the National Environmental Policy Act. The Alaskan fisheries are, indeed, an important national resource of this country. However, the Department does not believe the issuance of these maps per se amounts to a "major Federal action significantly affecting the quality of the human environment" within the meaning of the Act. Because, from the point of view of the Department of State, the drawing of the maps involved no change in any policy, no consideration was given to the possible need for an environmental impact statement. The Task Force, in consultation with the Council on Environmental Quality, is now considering the need for such statements in connection with any Federal regulatory, conservation or other actions which may be related to these maps.

As you have noted, some of the boundaries delimited on the maps have been the subject of disputes between the Federal Government and the State of Alaska; there are other areas in which disputes may arise in the future. Although these maps do reflect the position of the Federal Government it was not our intention to foreclose the possibility of changing this position in the future. It was for this reason among others that the caveat was placed on the maps. Accordingly, we would be happy to consider any information that you would wish to present

to determine whether or not the United States position should be changed. It is our hope that through this exchange of information and views it would be possible to foreclose the possibility of future disputes.

The Department understands and shares your desire to protect the valuable Alaskan fisheries, and we will cooperate with you in every way consistent with the overall interests of the United States. As you know, we are also working in the international forum of the United Nations Seabed Committee and bilaterally with a number of countries to solve problems concerning the oceans, including the major difficulties involved in conservation and the effective utilization of fisheries resources. We shall make every effort to see that these issues are resolved in a way that benefits the entire United States and its fishing industry.

Should you wish to have your staff work on this matter with Mr. John R. Stevenson, the Legal Adviser of the Department of State and head of the interagency Law of the Sea Task Force, he will welcome a call from them. His office number is 202-632-9598. I have asked Mr. Stevenson to keep me informed of further developments.

Sincerely,

John N. Irwin II

DX AM

Office Memorandum • UNITED STATES GOVERNMENT

886 - 04

TO : Regional Director, Bureau of Commercial Fisheries, Juneau, Alaska

DATE: January 20, 1960

FROM : Acting Chief, Division of Resource Management

SUBJECT: Request by Alaska Department of Fish and Game for base-line charts describing the waters of Alaska

In your memorandum of January 11, you indicate that you have an extra set of overlays showing the base-lines as the Bureau has interpreted the Federal regulation defining the waters of Alaska. Since the State regulation is identical, we see no reason why these overlays should not be turned over to the State as requested.

For your information, as soon as the State regulations have been made public, it is our intention to redraft the definition section of Part 130 to include the same description so as to indicate the waters outside of which Federal regulations will continue to apply.

John I. Hodges

Correspondence regarding 3-Mile Limit Overlay
Scudder Line - 1960.

Director, Bureau of Commercial Fisheries, FWS, Washington, D. C.

January 11, 1960

Regional Director, Bureau of Commercial Fisheries, FWS, Juneau, Alaska

Request by Alaska Department of Fish and Game for copy of base-line charts delineating waters of Alaska

Attached for your information is a copy of a letter from Commissioner Anderson, ADF&G, requesting copies of charts submitted to Canada outlining the base-line from which "waters of Alaska" were determined in applying federal fisheries laws to U.S. nationals in Alaska.

Inasmuch as Alaska now is responsible for enforcing its own regulations and is, of course, concerned with the problems which led to our submission of such charts to Canada, I can see no objections to providing a copy to Commissioner Anderson.

We have an extra set of "overlays" showing the base-lines, such as we submitted earlier to Washington and thence to Canada, which can be made available to the State.

Since this subject was developed through the State Department, I am requesting your approval before providing Mr. Anderson with a copy.

JOHN T. CHARRETT

Attachment

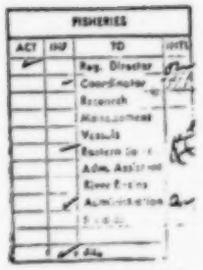
JTCharrett:jh

BOARD OF FISH AND GAME
RICHARD LAMSON, JR., SUTTON
CHAIRMAN
ARNOLD BROWER, POINT BARROW
OSCAR BYRON, KODIAK
ARTHUR H. HAYS, FAIRBANKS
ROBERT L. MARTIN, JUNEAU
DAN B. ROSS, ANCHORAGE
ROY S. SELFRIDGE, KETCHIKAN
ERLING STRAND, PETERSBURG

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
333 ALASKA OFFICE BUILDING JUNEAU, ALASKA
C. L. ANDERSON, COMMISSIONER

STATE OF ALASKA
WILLIAM A. EGAN
GOVERNOR

January 8, 1960



copy to Director
Wash D.C.
Dec 1960

Mr. John Charrett, Regional Director
Bureau of Commercial Fisheries
U.S. Fish and Wildlife Service
Box 2481
Juneau, Alaska

Dear John:

It has been brought to my attention that you have prepared charts delineating the extent of the marginal seas for control of United States nationals. These were given to Canada during the recent discussions relative to fishing boundaries. I am sure that these charts would be of use to the State and wondered if a set could be made available to us.

Sincerely,

ALASKA DEPARTMENT OF FISH AND GAME

Andy

C. L. ANDERSON, Commissioner

CLA-WK:kp

January 29, 1960

Mr. C. L. Anderson, Commissioner
Alaska Department of Fish and Game
229 Alaska Office Building
Juneau, Alaska

Dear Andy:

In response to your request of January 8, 1960, I am sending under separate cover, overlays of charts delineating the base-line along the Alaska coast from which we established the "Waters of Alaska" as defined in the Bureau of Commercial Fisheries Code, section 191.29, which was effective prior to transfer of management responsibilities to the State.

We have only one set of original charts showing such base-line from which the overlays are traced. We will keep these on file and make them available should you wish to inspect them. In drawing this base-line we believe that we have included all existing Alaska along shore salmon net fisheries.

This information was submitted to Canada upon their request for information concerning section 130.10 of our regulations, and was submitted with the explanation that this was the manner in which the regulations applied to U.S. fishermen. We definitely avoided any reference to International or Territorial waters.

I might add that we have not had occasion to make any arrests for violation of these regulations.

If you have any further questions on this matter, I will be pleased to discuss them with you.

Sincerely,

John T. Charrett
Regional Director

cc: Director, BCF, Washington, D.C.

JTCharrett:jh

DX AN

[illegible] 2 AAC 21.100
5 AAC 21.200

CHAPTER 21. COOK INLET-RESURRECTION BAY AREA.

Article
1. Description of Area (5 AAC 21.100)
2. Fishing Districts, Subdistricts, and Sections (5 AAC 21.200)
3. Salmon Fishery (5 AAC 21.310 - 5 AAC 21.350)
4. Bottom Fish Fishery (5 AAC 21.410)
5. Smelt Fishery (5 AAC 21.510)
6. Herring Fishery (5 AAC 21.610 - 5 AAC 21.650)
7. Shellfish Fishery (5 AAC 21.710 - 5 AAC 21.792)
8. Freshwater Fishery (5 AAC 21.850 - 5 AAC 21.880)
9. Subsistence Fishery (5 AAC 21.910 - 5 AAC 21.992)

ARTICLE 1. DESCRIPTION OF AREA.

Section
100. Description of area

5 AAC 21.100. DESCRIPTION OF AREA. The Cook Inlet-Resurrection Bay area includes all waters of Alaska in Cook Inlet and Resurrection Bay north of Cape Douglas and west of Cape Fairfield, including the Barren Islands.

Authority: AS 16.05.250(2)

ARTICLE 2. FISHING DISTRICTS, SUBDISTRICTS AND SECTIONS.

Section
200. Fishing districts, subdistricts and sections

5 AAC 21.200. FISHING DISTRICTS, SUBDISTRICTS AND SECTIONS. (a) Northern district: north of a line extending from Boulder Point at 60° 46' 23" N. lat., to Shell platform C, then to a point on the west shore at 60° 46' 23" N. lat.

(b) North Central district: between a line extending from Boulder Point at 60° 46' 23" N. lat., to Shell platform C, then to a point on the west shore at 60° 46' 23" N. lat., and the latitude of the marker at the south limit of the closed area at Kasilof River, including the waters adjacent to Kalgin Island.

(c) South Central district: between the latitude of the marker at the south limit of the closed area at Kasilof River and the latitude of Anchor Point light, excluding the waters adjacent to Kalgin Island.

(d) Southern district: south of a line extending from Anchor Point to 59° 46' 15" N. lat., 153° 00' 39" W. long., and north and east of a line extending from the aforementioned latitude and longitude to Point Adam, including all of Kachemak Bay.

Fish and Game Regulation 37 (5 AAC 21.100 and 5 AAC 21.200) Chapter 21. Cook Inlet - Resurrection Bay Area. April, 1971, page 5-67.

DX AR

File as
International - Territorial
waters
1920's

Alaska Fishery
Regulation Data
1924 - 1928
14/33:24-2
Container 1 - 57A150

Fishing Jurisdiction Controversy over Tariff Maps (1930).

October 20, 1930.

United States Tariff Commission,

Washington, D. C.

Gentlemen:

My attention has just been called to the fact that in connection with the investigation by the United States Tariff Commission under the terms of Senate Resolution 51d, 71st Congress, 2nd Session, a chart of Alaska has been sent to the Collector of Customs for District No. 31 at Juneau, for distribution to fishery operators along with a schedule which calls for information as to catches on the high seas outside of state or territorial waters and catches within state or territorial waters. It is noted that the schedule makes special reference to this chart.

Examination of the chart shows that a red line has been drawn along the coast, inside of which there is printed in red the words "territorial waters" and outside of which there is printed in red the words "high seas". I note that the red line deeply indents the Alaskan coast just north of Dixon Entrance, Chatham Strait, Yakutat Bay, Cook Inlet, Nushagak Bay, and Kvichak Bay.

I notice also the statement on the chart that the line between the high seas and territorial waters was drawn by the United States Tariff Commission for the sole purpose of facilitating the conduct of the investigation mentioned and is not to be regarded as having official sanction or significance for any other purpose.

In my opinion, the designation on this chart of territorial waters and high seas may prove exceedingly harmful and detrimental to American fisheries industry. In spite of the statement that the chart has no official sanction or significance in respect to what constitutes high seas or territorial waters, it seems to me that it is, in effect, an invitation to foreign fishery interests to invade waters which heretofore have always been considered as open only to nationals of the United States.

I refer particularly to the grave situation which may arise because of Japanese vessels fishing for salmon in the waters of Kvichak Bay and Nushagak Bay. Kvichak Bay produces from five to ten million dollars' worth of salmon each year and practically all of the catch is made by American fishermen in waters shown on the chart as the high seas. Also salmon worth more than a million dollars are caught each year in Nushagak Bay in waters which are indicated as a part of the high seas.

Under this situation there is nothing to prevent Japanese floating canneries from anchoring in the waters of Kvichak Bay or Nushagak Bay and competing with American fishermen. It is easy to see what great damage thus could be done to American industry in these waters. That the Japanese already have their eye on this field is evidenced by the fact that a large floating cannery was anchored twenty miles off the Alaskan Peninsula in the vicinity of Port Moller during the summer of 1930 engaged in the packing of crabs. Another smaller Japanese vessel put into Dutch Harbor, Alaska, for fresh water on its way to Tokyo early last month, and was detained by a Coast Guard vessel. It developed that the catch was small and of an experimental nature, and as track charts and other evidence indicated that the catch was made fifteen or more miles offshore, the vessel was released.

Under the circumstances, I wish to request that every effort be made by the United States Tariff Commission to withhold the issuance of the Alaska chart referred to herein. If any copies of it fall into the hands of Japanese fishery interests or into the hands of Canadian fishermen, great harm may result to American industry.

Your cooperation in this matter will be greatly appreciated.

Very sincerely,

R P Lamont

Secretary of Commerce.

WTB-CC

Oct 20/30

October 31, 1930.

Mr. Henry P. Fletcher,
Chairman, United States Tariff Commission,
Washington, D. C.

Dear Mr. Fletcher:

Referring to your letters of October 28 and October 28, I desire to express my appreciation of your prompt action in ordering the complete withdrawal of the maps prepared by the Coast and Geodetic Survey for use in connection with the Tariff Commission's statistical review of the fisheries of Alaska. This course of action will avoid any possible complication or embarrassment had the maps been made public.

At the request of the Coast and Geodetic Survey, the Commissioner of Fisheries several days ago directed that copies of the maps which had been sent to the offices at Seattle, Washington, and Juneau, Alaska, be returned promptly so that they might be forwarded to the Coast and Geodetic Survey, together with several copies of the maps retained in the office of the Commissioner of Fisheries. The records of the Coast and Geodetic Survey show that eleven copies of the maps were furnished the Bureau of Fisheries. All of these in due time will be forwarded to the Coast and Geodetic Survey so that they may be turned over to the Tariff Commission.

Very sincerely,

(Sgd) R. P. Lamont
Secretary of Commerce.

WTB-CS

UNITED STATES TARIFF COMMISSION
WASHINGTON

CHIEF CLERK
DSO OCT 30 AM 9 08

HENRY P. FLETCHER
Chairman

FISHERIES
OCT 30 1930

COMMISSIONER
FISHERIES

October 28, 1930

My dear Mr. Secretary:

Further reference is made to your letter of October 20 calling the commission's attention to a possible misunderstanding which might result from the distribution of maps prepared by us for use in certain sections of Alaska in connection with our study of Alaskan fisheries.

In compliance with your request the commission has instructed the Collector of Customs at Juneau to return all the maps in his possession to the commission, where they will be destroyed together with all others on hand here. The Government Printing Office and the Coast and Geodetic Survey have also been instructed to destroy the plates from which the red line and the disclaimer on the maps were printed, and all of the maps which were not delivered to the office of the commission.

The Coast and Geodetic Survey has informed us that on verbal request from the office of the Commissioner of Fisheries, they have mailed to the representative of that bureau at Juneau two copies of these maps, and have delivered to the office of the Commissioner of Fisheries, four copies. May we request, therefore, that these maps also be returned to this office for destruction, inasmuch as the commission feels that unless all of the maps are returned to this office, it can not be held responsible for the use which might be made of them.

Sincerely yours,

Henry P. Fletcher,
Chairman.

The Honorable
The Secretary of Commerce,
Washington, D.C.

569-731 O - 75 - 19

UNITED STATES TARIFF COMMISSION
WASHINGTON

HENRY P. FLETCHER
CHAIRMAN

CHIEF CLERK
DEC OCT 23 AM 9 50

October 22, 1930.

My dear Mr. Secretary:

Your letter of October 20 has been received in regard to possible misunderstandings which might arise in connection with the Alaskan fishing industry if proposed maps, in which there is a tentative demarkation between "territorial waters" and "high seas", should be distributed among Alaskan fisheries.

The Commission can readily understand how the distribution of these maps might cause embarrassment to your Bureau of Fisheries and it has accordingly requested the Collector of Customs at Juneau, Alaska, to withhold distribution of them.

Meanwhile representatives of the Commission are in touch with the Bureau of Fisheries for the purpose of working out detailed plans for obtaining the information desired by the Commission without the use of the maps referred to.

The Commission appreciates the spirit of cooperation which your Bureau of Fisheries has shown in connection with this investigation.

Sincerely yours,

Henry P. Fletcher,
Chairman.

The Honorable,
The Secretary of Commerce,
Washington, D. C.

DX 8E

WESTERN UNION TELEGRAM

MAY 28, 1924

129 FY LD 48

CHICAGO ILL T55P

HENRY OMALLEY

COMMISSIONER OF FISHERIES DEPARTMENT OF

FISHERIES WASHINGTON DC

OUR CAPTAIN HALIBUT BOAT ZAPORA WIRES FISH COMMISSIONER WILL NOT ALLOW HIM FISH FOR HALIBUT IN COOKSINLET WITHOUT PERMIT FROM YOUR DEPARTMENT ALL OTHER FISHING GROUNDS COVERED BY OTHER SCHOONERS AND WE RESPECTFULLY REQUEST PERMIT FISH COOKINLET AS OTHERWISE WILL INCUR SUBSTANTIAL DAMAGE AND LOSS TO THIS COMPANY

P L SMITHERS

MSH - 17

May 28, 1924.

P. L. Smithers,
Booth Fisheries Company,
Chicago, Illinois.

Have telegraphed Studdert at Seldovia to issue local permit authorizing Zapora fish for halibut in Cook Inlet.

O'Malley.

WESTERN UNION TELEGRAM

1924 MAY 25 AM 6 42

CC102 24 GOVT COLLECT NL VIA SEATTLE

SELDOVIA ALASKA 28

BUREAU FISHERIES

WASHINGTON DC

BOARDED BOOTH FISHERIES STEAMER ZAPORA AND NEW ENGLAND FISH
COMPANY STEAMER NEW ENGLAND TODAY FINDING BOTH FISHING
HALIBUT IN COOK INLET WITHOUT PERMITS

STUDDERT.

MSH - 17

May 28, 1924.

Studdert, Fisheries agent,
Seldovia, Alaska

Master Zapora wires you will not allow him fish for halibut Cook Inlet without permit from Department (stop) You should issue permit immediately.

O'Malley.

Copy to Seattle office.

DX BF

DEPARTMENT OF COMMERCE
BUREAU OF FISHERIES

1924

MONTHLY REPORT OF VESSELS.

Name of vessel U.S.F.S. Kittiwake Month of May 192[illegible]

Prepared at Anchorage on June 3 192[illegible]

Vouchers submitted as per list on attached sheet $ 715.81

Vouchers previously reported $ 5237.30

Total to date, $ 5953.11

Outstanding liabilities for which vouchers have not been submitted $

Number of days on which vessel was running 22 Total number of hours 163.50

Maximum running time one calendar day 18 hrs. 5 min. Average hours per day 7.431

Hours consumed on longest continuous run 124

Total number nautical miles run 55.09 Maximum miles run one calendar day 7.0645

Average miles run per day Average miles per hour 17 Gals

Fuel used in running 490 Gals Diesel Oil 13 Gals Gas Lubricating oil used, total 66 Gals Diesel Oil 4 Gals Gas .0133

Fuel used not running 556 Gals Diesel Oil 17 Gals Gas Lubricating oil used per mile $6.97

Fuel used, total 42.41 Lubricating oil cost, total .41

Oil used, total cost Diesel Oil .07 Gas .205 Lubricating oil cost per gal .0054538

Fuel cost per gallon or ton .03318 Lubricating oil cost per mile

Fuel cost per mile

Report of operations on attached sheet.

Report of voyage ("Eider" only) on attached sheet.

General report ("Eider" only) on attached sheet.

Mess report ("Eider" only) on attached sheet.

R. L. Cole

Master.

This report is to be prepared promptly at the end of each month.
Alaska vessels: One copy is to be retained; the original and three copies are to be sent to the officer in charge of district, who will retain one copy, initial and forward the original and two copies to the Seattle office, which will retain one copy and forward the original and one copy to the Bureau in Washington, D. C.
Other vessels: One copy to be retained and original forwarded to Bureau.

Log of U.S.F.S. Kittiwake, May 1924.

2

Name of vessel U.S.F.S. Kittiwake Report of operations for month of May, 1924

General remarks (to include synopsis of work done, recommendations, changes in personnel, accidents, etc.).

Completed trip from Cordova to Cooks Inlet via Seward. Leaving Port Henry May 1 On arrival at Port Graham (Cooks Inlet) May 2, vessel was put on beach and copper painted. Propeller and rudder inspected. The iron shoe holding rudder was found to be badly eaten by galvanic action. Iron shoe was removed and new piece installed for temporary use only. Template was made for having piece cast of bronze to replace the iron.

Calls were made in Cooks Inlet at the following places: Port Graham, Seldovia, English Bay, Halibut Cove, Fox Creek, Anchor Point, Kachemak, Kenai River, East Foreland, Anchorage, Shorty Creek, Tyonek, Snug Harbor, Polly Creek, and Seldovia River. Boarded Halibut steamer Zapora and New England fishing in Cooks Inlet.

Names of employees of Bureau transported, other than crew, and periods aboard:

C. P. Studdert, aboard May 5th to 31st inclusive.

Other persons transported (give names, places, and dates):
Dan Patterson, aboard 11 A.M. May 12 to 3:05 P.M. May 15, Anchorage to Seldovia via Kenai.
Miss Anderson and Mrs. Simpson, aboard 7:30 A.M. to 9:20 A.M. May 16th Port Graham to Seldovia.
Dan Patterson, aboard 11 A.M. May 16th to 12:26 P.M. May 17th, Seldovia to Halibut Cove and return. V. L. Waller and Dick Gray, aboard 11:20 A.M. to 6:30 P.M. May 16th, Seldovia to Anchor Point, via Halibut Cove. Harold Johnson, aboard 8:40 A.M. May 19th to 12:35 A.M. May 31st., Port Graham to Anchorage.
Dan Patterson aboard 11:20 A.M. May 19th to 12:35 A. M. May 21st, Seldovia to Anchorage

R. L. Cole
Master.

3

Name of vessel U.S.F.S. Kittiwake

Vouchers forwarded to office during month of May, 1924

Classifications are—
(a) "Maintenance." To include minor routine repairs, replacing worn out or lost equipment, fuel for galley, painting, stores such as tools, light, oil, waste, packing, water, linen, belting, laundry, etc. (b) "Fuel." (c) "Wages." (d) "Repairs." General overhauling or repairs of some magnitude. (e) "Equipment." *Additions* to equipment only. (f) "Subsistence."

REQ. No.	PAYEE.		CLASSIFICATION.	AMOUNT.
1924				
4/5	Pacific Marine Supply Co.	Seattle	Maintenance	30.51
4/1	Union Gas Engine Co.	San Francisco	"	[illegible].20
4/21	Alaska Transfer Co.	Cordova	"	6.00
L C32761	Pacific Steamship Co.		"	2.80
	Pay Roll			
	R. L.Cole	Master	Wages	160.00
	Eugene H. Mason	Engineer	"	130.00
	Ernest F. Schroeder	Quartermaster	"	90.00
	Thomas Kinney	Cook	"	90.00
	R. L. Cole	Officer of Mess	Subsistence	124.00
			TOTAL.	715.71

Log of the U. S. F. S. KITTIWAKE

Month of May, 1924

1921

May 1	6:21 A. M.	Leave Port Bonny for Cooks Inlet via Seward.
	2:00 P.M.	Arrive Seward, Standard Oil Dock. Take on 1118 Gals, Diesel Oil, 57 Gals. Gasoline, 2-10 lb. Cans Transmission grease, 1250 lbs. Stove Coal. U. S.Forest Service furnished 446 gals Diesel Oil, U. S. Radio, furnished 148 gals Diesel Oilof the above amount.
	4:40 P.M.	Leave Seward. Arrive and anchor at Sunny Cove 6:45 P.M. Distance Run, 72 miles Time run, 9 hours, 44 minutes
May 2	4:10 A.M.	Leave Sunny Cove, Renard Island, Resurrection Bay.
	6:50 A.M.	Stop and drift in passage between Harbor Isd. and Mand to Eastward.
	7:34 A.M.	Under way
	10:15 P.M.	Arrive at Port Graham, make fast at Gas Boat Chacon at dock. Distance Run, 124 miles Time Run, 18 hours, 5 minutes
May 3		At Port Graham, borrowed ten empty drums from the Fidolgo Isd. Pckg.Co. Pumped those drums full of oil from our tanks to light load preparatory to going on beach for copper painting.
	1:30 P.M.	Go on beach alongside grid-iron, listing vessel slightly in shore, making fast to two pilots. Examination was made of propeller and rudder at low water. The extension of brass shoe holding bottom of rudder was found to be iron and badly eaten by galvanic action. The bolts were almost gone and bolt-holes eaten out. A new piece of iron was installed for temporary use. Template made to have new extension made of bronze.
May 4		On beach at Port Graham finished cleaning and copper painting bottom, also renewed iron shoe.
May 5	1:30 A.M.	Came off of beach at Port Graham and made fast to scow at dock. Pumped 4 drums of fuel oil aboard. Took on supplies and water.
	1:30 P.M.	Left Port Graham with Mr. Studdert.
	3:30 P.M.	Arrived Seldovia.
	5:45 P.M.	Left Seldovia
	8:55 P.M.	Anchor Halibut Cove Distance Run 37 miles Time Run 5 hours, 10 min.
May 6	7:25 A.M.	Left Halibut Cove
	4:20 P.M.	Arrived Kenai River, make fast to gas boat Tolovina at N.W. Cannery Dock.
	4:35 P.M.	Left Cannery
	4:42 P.M.	Make fast to Dolphin down river. Distance 85 miles Time Run, 9 hours, 2 min.

Log of the U. S. F. S. KITTIWAKE

Month of May, 1924

May 7	5:15 A.M.	Left dolphin, Kenai River. Went to Libby's Cannery and left Mr. Studdert with Kittiwake Skiff.
	5:55 A.M.	Returned to dolphin.
	11:00 A.M.	Mr. Studdert returned to Kittiwake with skiff and I accompany him to Kenai Village for the purpose of investigating channel and range entering Kenai River.
	2:13 P.M.	Leave dolphin for Kenai River
	10:05 P.M.	Anchor south of railroad dock, Anchorage. Distance Run, 74 miles Time Run 8 hours.
May 8		At anchor, Anchorage
	7:00 P.M.	Weigh anchor and go to railroad dock. Mr. and Mrs. Reid and Mr. Jesson visit ship during the evening
	11:00 P.M.	Anchor in stream.
May 9) 10)		At anchor, south of R.R. Dock.
May 11		At Anchorage
	10:30 A.M.	Haul into dock from stream and receive visitors.
	1:45 P.M.	Move out into stream and anchor.
May 12	11:00 A.M.	Leave Anchorage, Mr. Studdert and Dan Patterson aboard
	11:07 P.M.	Arrived Kenai River and make fast to dolphin Distance Run, 74 miles, Time Run 8 Hrs.,36 minutes
May 13	9:12 A.M.	Leave Kenai River dolphin
	9:30 A.M.	Arrive Libbys Cannery
	11:12 A.M.	Leave Libby's Cannery
	11:30 A.M.	Anchor off Kenai Village Dock, and remain over night Engineer takes off cylinder head and grinds valve in No. 3 cylinder. Distance Run 8miles Time Run, 36 minutes
May 14	9:35 A.M.	Leave Anchorage off Kenai Village Dock
	9:56 A.M.	Arrive Libby's Cannery
	10:00 A.M.	Leave Libby's Cannery
	5:05 P.M.	Arrive Snug Harbor Cannery So'west prevented us from landing at dock. We proceed about 3/4 mile north of the Cannery
	5:20 P.M.	Anchor 7 fathoms, Mud bottom Distance Run, 58 miles Time Run, 7 hours 41 min.
May 15	8:10 A.M.	Leave Anchorage 3/4 mile north of Snug Harbor Canneey
	3:05 P.M.	Arrive Seldovia
	4:45 P.M.	Leave Seldovia

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May 15(Cont)	6:40 P.M.	Arrived at Port Graham Cannery Distance Run 63 Miles Time Run,8 hours,50 minutes
May 16	7:30 A.M.	Leave Port Graham
	9:20 A.M.	Arrive Seldovia
	11:00 A.M.	Leave Seldovia
	1:45 P.M.	Arrive Halibut Cove, Anchor abeam Munson House. Miss Anderson and Mrs. Simpson, Port Graham to Seldovia Dan Patterson 4e,Seldovia to Halibut Cove. Distance Run 37 miles Time Run, 4 hours, 20 minutes
May 17	7:50 A.M.	Leave Halibut Cove
	9:50 A.M.	Anive Christensen Fox Ranch. Anchor in 4 fathoms close to shore.
	10:55 A.M.	Leave Christensens
	12:26 P.M.	Arrive Seldovia
	6:28 P.M.	Leave Seldovia
	8:30 P.M.	Arrive Port Graham Cannery Distance Run 40 miles Time Run, 5 hours 33 minutes.
May 18		At Port Graham
May 19	8:40 A.M.	Leave Port Graham
	10:13 A.M.	Arrive Seldovia
	11:20 A.M.	Leave Seldovia
	1:55 P.M.	Arrive Halibut Cove and anchor
	3:10 P.M.	Leave Halibut Cove
	10:00 P.M.	Arrive off Ninilchuk Village, anchor in 2 fathoms.
	11:30 P.M.	Leave Ninilchuk
	12:00 P.M.	3 Miles Northwest of Ninilchuk, enroute Kenai River Distance Run 100 Miles Time Run, 12 hours, 28 min.
May 20	12:00 A.M.	3 Miles Northwest of Ninilchuk Village, enroute Kenai River
	3:20 P.M.	Arrived Kenai River dolphin
	1:20 P.M.	Leave dolphin. Pick up Mr. Studdert, Dan Patterson at Kenai wharf. Leave wharf and proceed up river for Libby's Cannery.
	2:05 P.M.	Arrive Libby's Cannery
	2:25 P.M.	Leave Libby's Cannery
	12:00 P.M.	Off Woronsoff Point, enroute Anchorage
May 21	12:00 A.M.	Off Point Woronsoff, enroute Anchorage
	12:35 A.M.	Arrive Anchorage, anchor south of R.R. Dock, 7 fathoms Distance Run, 4 miles Time Run, 35 minutes
May 22 23)		At anchor south of R.R. Dock, Anchorage.

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May 24	9:25 A.M.	Leave Knchorage.
	2:35 P.M.	Arrive off Shorty Creek, anchor in 3¾ fathoms
	3:25 P.M.	Leave Shorty Creek
	4:25 P.M.	Anchor off Tyonek Village
	7:30 P.M.	Leave Tyonek
	8:20 P.M.	Arrive Shorty Creek, make fast to pile driver
	8:48 P.M.	Leave Shorty Creek
	12:00 P.M.	Off north point Fire Island and round Anchorage Geo. Bolgh, Shorty Creek and Tyonek Country and return Mrs. Everett and Frank Smith, Tyonek to Anchorage Distance Run 72 miles Time Run, 10 hours, 31 min.
May 25	12:00 A. M.	Off north point Fire Island
	1:10 A.M.	Arrive Anchorage Dock. Mrs. Everett and Mr. Smith go ashore
	1:25 A.M.	Anchor in stream south of R.R. Dock, Anchorage
	12:45 P.M.	Start Weigh anchor
	1:04 P.M.	Leave Anchorage
	4:15 P.M.	Stop Shorty Creek. Deliver telegram to Mr. Gill
	4:23 P.M.	Leave Shorty Creek
	5:15 P.M.	Anchor off Tyonek Village, abreast store building, 5 fathoms Distance Run 49 miles Time Run,5 hours, 52 min.
May 26	1:15 A.M.	Leave Tyonek
	4:15 A.M.	Anchor 3 miles off Kenai River, wait for flood-tide
	6:30 A.M.	Weigh anchor, proceed for Kenai River
	7:15 A.M.	Make fast to dolphin, Kenai River
	6:20 P.M.	Leave dolphin, Kenai River
	8:25 P.M.	Make fast to Libby's pot-scow, 2 miles north of East Forland
	11:43 P.M.	Leave pot-scow, East Forland
	12:00 P.M.	East Forland, enroute Polly Creek Distance Run, 85 miles Time Run, 6 hours, 42 min.
May 27	12:00 A.M.	Off East Forland, enroute Polly Creek
	4:00 A.M.	Slow down and take soundings, and head in for shore where a lot of clam-diggers tents are located, Northeast of Polly Creek
	4:40 A.M.	Anchor 1/8 mile off shore in 2½ fathoms. Mr. Studdert and myself go ashore in skiff. Studdert walks to Polly Creek I return to Kittiwake.
	6:00 A.M.	Leave anchorage northeast of Polly Creek
	6:50 A.M.	Arrive off Polly Creek and anchor in 1½ fathoms
	7:50 A.M.	Leave Polly Creek
	9:50 A.M.	Arrive Snug Harbor Cannery Dock
	10:35 A.M.	Leave Snug Harbor Cannery
	12:40 P.M.	Boarded steamer Zapora, fishing halibut, so'west of anchor point
	12:50 P.M.	Left Zapora
	1:10 P.M.	Boarded steamer New England, also fishing halibut
	1:18 P.M.	Left steamer New England Distance Run 104 miles
	4:35 P.M.	Arrive Seldovia Dock Time 13 hours,35 min.
	9:15 P.M.	Pulled away from dock and anchored in stream

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May 28 8:40 A.M. Leave Seldovia
10:22 A.M. Stop inside of Passage Island (entrance to Port Graham) Mr. Studdert and Q.M. take skiff and row to English Bay Kittiwake proceeds to Port Graham.
11:00 A.M. Arrive Port Graham

Distance Run, 16 miles
Time Run, 2 hours, 20 min.

May 29 9:50 A.M. Leave Port Graham
10:30 A.M. Anchor in English Bay
11:40 A.M. Leave English Bay with Artic Packing Co. scow intow
2:10 P.M. Arrive Seldovia
9:15 P.M. Leave Seldovia
11:58 P.M. Arrive Halibut Cove and anchor

Distance Run, 40 miles
Time Run, 8 hours, 52 min.

May 30 9:13 A.M. Leave Halibut Cove
10:55 A.M. Anchor in 3½ fathoms abreast Clark's ranch (Kachemak Bay) Mr. Studdert, Q.M. and self go ashore in skiff to investigate Fox Creek.
10:50 P.M. Leave Anchorage off Clark's ranch
12:00 P.M. Off Glazier Spit, enroute Halibut Cove

Distance Run, 22 miles
Time Run, 2 hours, 52 min.

May 31 12:00 A.M. Off Glazier Spit, enroute Halibut Cove
12:32 A.M. Anchor Halibut Cove
8:01 A.M. Leave Halibut Cove
11:00 A.M. Arrive Seldovia
2:05 P.M. Leave Seldovia
2:20 P.M. Anchor in lee of starboard hand point above Powder Island (Seldovia Bay) Studdert and Mason go up Seldovia River to investigate spawning conditions in this stream
6:20 P.M. Leave anchorage
6:35 P.M. Arrive Seldovia

Distance Run, 30 Miles
Time Run, 4 hours,

Total Distance Run 1278 Miles
Total Time Run, 163.50.

Form 819

DEPARTMENT OF COMMERCE
BUREAU OF FISHERIES

MONTHLY REPORT OF VESSELS.

Name of vessel U.S.F.S. Kittiwake Month of April 1924

Prepared at Anchorage, Alaska, on May 10 1924

Vouchers submitted as per list on attached sheet $ 609.03

Vouchers previously reported $4628.27

Total to date, $5237.30

Outstanding liabilities for which vouchers have not been submitted $

Number of days on which vessel was running 11 Total number of hours 67.50

Maximum running time one calendar day 11 hrs. 28 min. Average hours per day 6.1363

Total number nautical miles run 478 Maximum miles run one calendar day 82

Average miles run per day 43.454 Average miles per hour 7.081

Fuel used in running 188 Gals. Diesel Oil 10 Gals Gas

Fuel used not running 6 Gals. Diesel Oil 17 Gals Gas

Fuel used, total 194 Gals Diesel Oil 27 Gals Gas.

Fuel used, total cost $13.49

Fuel cost per gallon or ton Diesel Oil .0417 Gas. $ .20

Fuel cost per mile .0282

Lubricating oil used, total 7 Gals

Lubricating oil used per mile .014644

Lubricating oil cost, total $2.37

Lubricating oil cost per gal. .41

Lubricating oil cost per mile .006

Report of operations on attached sheet.

Report of voyage ("Eider" only) on attached sheet.

General report ("Eider" only) on attached sheet.

Mess report ("Eider" only) on attached sheet.

R. L. Cole
Master.

This report is to be prepared promptly at the end of each month.

Alaska vessels: One copy is to be retained; the original and two copies are to be sent to the officer in charge of district, who will retain one copy and will initial and forward the original and one copy to the Bureau with or without comment.

Other vessels: One copy is to be retained and original forwarded to Bureau.

11—888

DX BV

Department of Justice.

Number 671 1893 Received
File No 6384 1893 Feb 10 1893

From The Secretary of the Treasury

SUBJECT:

Encl. copy of Alaska Herald containing opinion of Judge Truitt in case of the Schooner "Kodiak."

Also circular of January 19

Charged to O.A.G.

ACTION:

Filed.

Feb 9 1893

Secretary of the Treasury Dated Feb 9 1893

Treasury Department,
Office of the Secretary,
Washington, D. C., February 9, 1893.

The Honorable

The Attorney General.

Sir:-

I have the honor to return herewith, in accordance with the request contained in your letter of the 28th of December last, copy of the Alaska Herald, dated December 12, 1892, containing the opinion of Judge Truitt in the case of the United States vs. the Schooner "Kodiak," seized for the alleged killing of Sea Otter. I also enclose for your information copies of a Circular of this Department, dated the 19th ultimo, concerning the killing of fur bearing animals in Alaska.

Respectfully yours,

Charles Foster

Secretary.

Three enclosures.

6384. 1671

Letter, Secretary of the Treasury Department to the Attorney General, February 9, 1893.

CIRCULAR.

KILLING OF FUR-BEARING ANIMALS IN ALASKA.

1893.
Department No. 11.
Bureau of Special Agents.

Treasury Department,

OFFICE OF THE SECRETARY,

Washington, D. C., January 19, 1893.

To Collectors and other Officers of the Customs, and to Officers of the Revenue Marine:

Section 1956 of the Revised Statutes of the United States provides that no person shall, without the consent of the Secretary of the Treasury, kill any otter, mink, martin, sable, or fur seal, or other fur-bearing animal within the limits of Alaska Territory or in the waters thereof, and that any person convicted of a violation of that section shall for each offense be fined not less than $200 nor more than $1,000, or be imprisoned not more than six months, or both; and that all vessels, with their tackle, apparel, furniture, and cargo, found engaged in violation of that section, shall be forfeited.

No fur-bearing animal will be allowed to be killed by persons, other than natives, within the limits of Alaska Territory or in the waters thereof.

The killing by anyone of fur seals, except upon the Pribilof Islands by such party or parties as are permitted so to do, pursuant to the terms of a contract between the Government of the United States and such party or parties, is prohibited.

White men married to natives and residing within the Territory will not be entitled to the privilege of natives under this order.

The use of rifles, shotguns, or other firearms by the natives in killing sea otter, or the use of nets in taking them, is hereby prohibited.

No vessel except United States revenue cutters will be allowed to transport parties of natives to or from localities where sea otter are found.

Masters of vessels having on board skins of otter, mink, martin, sable, fur seal, or other fur-bearing animals taken in Alaska or Alaskan waters, before unlading the same shall report to the collector of customs at Sitka, or to a deputy collector at one of the ports of delivery in the district of Alaska, and shall file a manifest thereof and obtain a permit for their transportation if destined for a port in some other collection district, or if destined for a foreign port shall obtain a clearance.

Masters of vessels failing to comply with these regulations will be considered as having violated the provisions of section 1956 of the Revised Statutes, and will be liable to the penalties prescribed therein.

It will be the duty of the officers of the United States who may be in the localities where sea otter, mink, martin, sable, or fur seal, or other fur-bearing animals are taken, or who may have knowledge of any such offense committed, to take all proper measures to enforce the penalties of the law against persons guilty of a violation thereof.

These regulations supersede all others previously in force.

O. L. SPAULDING,
Acting Secretary of the Treasury.

NOTE.—The present ports of delivery in Alaska are Mary Island, Wrangle, Juneau, Sand Point, Kadiak, and Unalaska.

63[illegible]1671

Treasury Department Circular, "Killing of Fur-Bearing Animals in Alaska," January 19, 1893.

IMPORTANT CASES DECIDED

As reported by "The Alaska Herald" at Sitka, Alaska, Monday, December 12, 1892, Vol 1, No. 25

On last Monday decisions were rendered in the United States Court here, in the cases of the schooners Kodiak, Lottie and the steamer Jennie, seized for alleged killing of sea-otters. Much interest has been felt in these cases as a new and important question is involved. We publish the decision in the Kodiak case in full.

In the United States District Court for the District of Alaska.

The United States,)
vs.)
The Schooner Kodiak.)

In Admiralty, Libel of forfeiture for violation of Section 1956 Revised Statutes.
C. S. Johnson, District Attorney.
A. C. Barry and John S. Bugbee, for claimant.
Warren Truitt, District Judge.

The libel which was filed in this case on the 15th of June, 1892, alleges that the schooner Kodiak, on or about the 6th of June, 1892, was seized by Henry L. Johnson, Commander of the United States steamer Mohican, in Cook's Inlet in the waters of Alaska and within the jurisdiction of this court, and then sets out the case of said seizure as follows:

"That said vessel, her captain, officers and crew, assisted by a large number of natives of Alaska, were at said time unlawfully engaged in killing and did kill fur-bearing animals known as otter, within the limits of Alaska Territory and in the waters thereof, in violation of the provisions of section 1956 of the Revised Statutes of the United States in such cases made andprovided."

This section is as follows: "No person shall kill any otter, mink, martin, sable or fur-seal, or other fur-bearing animal, within the limits of Alaska Territory or in the waters thereof, and every person guilty thereof, shall, for each offense, be fined not less than two hundred nor more than one thousand dollars, or imprisoned not more than six months, or both, and all vessels, their tackle, apparel, furniture and cargo, found engaged in violation of this section, shall be forfeited; but the Secretary of the Treasury shall have power to authorize the killing of any such mink, martin, sable or other fur-bearing animal, except fur-seal, under such regulations as he may prescribe; and it shall be the duty of the Secretary to prevent the killing of any fur-seal and to provide for the execution of the provisions of this section until it is otherwise provided by law; nor shall he grant any special privileges under this section"

After the filing of the libel herein, on June 18th, 1892, the master of the Kodiak, intervening for and in behalf of the vessel, her tackle, apparel, furniture and cargo, appeared and alleged that at the time of the seizure of said property he was in possession thereof, and that it belonged to the Alaska Commercial Company, a corporation duly organized under the laws of California. This company in subsequent proceedings appeared as claimant, and on the 4th day of October, 1892, filed an answer to the libel. In this answer, by failing to deny, it admits the allegations of the libel as to the time, place, manner and authority of the seizure, but denies any violation of theprovisions of section 1956 or any other statute whatever, or the commission of any act which it might not lawfully do under and in pursuance of the authority conferred by regulations of the Secretary of the Treasury of the United States, issued and prescribed on the 21st of April, 1879.

Excerpts from "The Alaska Herald" at Sitka, Alaska, Monday, December 12, 1892, Vol. 1, No. 25.

561-731 O - 75 - 20

The regulations referred to in this answer were issued by Hon. John Sherman, and are given in the following notice or circular:

Treasury Department,
Washington, D.C., April 21, 1879.

"Section 1956 of the Revised Statutes of the United States provides that no person shall, without the consent of the Secretary of the Treasury, kill any otter, mink, martin, sable, or fur-seal or other fur-bearing animal within the limits of Alaska Territory, or in the waters thereof, and that any person convicted of a violation of that section, shall, for each offense, be fined not less than two hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both; and that all vessels, with their tackle, apparel furniture and cargo, found engaged in violation of that section, shall be forfeited. No fur-bearing animal will, therefore, be allowed to be killed by persons other than the natives within the limits of Alaska Territory, or in the waters thereof, except fur-seals taken by the Alaska Commercial Company in pursuance of their lease. The use of fire-arms by the natives in killing otter during the months of May, June, July, August and September, is hreby prohibited. No vessel will be allowed to anchor in the well-known otter-killing grounds, except those which may carry parties of natives to or from such killing-grounds; and it will be the duty of the officers of the United States, who may be in that locality, to take all proper measures to enforce all the pains and penalties of the law against persons found guilty of a violation thereof. White men lawfully married to natives and residing within the Territory are considered natives within the meaning of this order."

John Sherman,
Secretary of the Treasury.

Two principal questions arise in this case:

1. Was the Kodiak, at the time of her seizure, within waters over which the United States had jurisdiction to make the same? and

2. If so, were the acts, proved by the evidence to have been committed, a violation of section 1956, under the circular of the Secretary of the Treasury?

The evidence touching the first question is, that the vessel on June 6th, 1892, at the time of the seizure, was in latitude 59°9' N. longitude 152°41' W. well inside of Cook's Inlet, lying in a calm, within sight of the shore about twenty miles distant from it, at the nearest point. Cook's Inlet is on the eastern side of that portion of Alaska which borders on the Gulf of Alaska; it is about forty-seven miles wide at its entrance, and extends northward into the mainland a distance of, perhaps, a hundred and forty miles. The Kodiak when seized was, as shown from the map in evidence, at least three or four miles inside of a line drawn across the entrance to the inlet from Cape Douglas to Point Bede, the nearest headlands, and almost equally distant from them, but somewhat nearer to Cape Douglas. It was contended on behalf of the claimant that these facts show that this court has no jurisdiction to try the case for the reason that the municipal laws of the United States have no force upon the sea beyond a marine league or three miles from the shore line; and that the statute prohibiting the killing of fur-bearing animals within the limits of Alaska Territory or "in the waters thereof," only means, so far as it applies to the sea, a distance of three miles from the mainland or islands. If this position is correct, Congress did a vain and useless thing when it enacted the statute under which this prosecution is had; for from the nature

and habits of the sea-otter, if hunters are allowed to come with their vessels and hover along the coast within a few miles of shore, though beyond a marine league therefrom, and kill them without molestation, then the laws for their protection are futile and might as well be repealed. But the position is not correct; the contention is not a valid one. In Church v. Hubbart, 2 Cranch, 187, the doctrine is announced that nations may prevent the violation of their laws by seizures on the high seas, in the neighborhood of their own coast, and that there is no fixed rule prescribing the distance from the coast, within which such seizures may be made. However, it can hardly be claimed that any portion of Cook's Inlet is "high sea" within the accepted meaning of the phrase, for it is well land-locked by islands extending from Kadiak Island to Cape Elizabeth on the east, and can only be entered by coming in near some of these islands, or by the way of Shelikoff Straits. In Kett's Commentaries, Vol. 1.30, it is stated that: "The extent of jurisdiction over adjoining seas is often a question of difficulty and of dubious right. As far as a nation can conveniently occupy, and that occupancy is acquired by prior possession or treaty, the jurisdiction is exclusive. Navigable rivers which flow through a territory and the sea coast adjoining it, and the navigable waters included in bays and between headlands and arms of the sea, belong to the sovereign of the adjoining territory, as being necessary to the safety of the nation and to the undisturbed use of the neighboring shores." And on the same subject this learned author says: "Considering the great extent of the American coast, we have a right to claim for fiscal and defensive regulations, a liberal extension of maritime jurisdiction; it would not be unreasonable, as I apprehend, to assume, for domestic purposes connected with our safety and welfare, the control of the waters on our coasts, though included within lines stretching from quite distant headlands as, for instance from Cape Ann to Cape Cod, and from Nantucket to Montauk Point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi."

In 1849 Mr. Buchanan, Secretary of State, declared the claims of the United States to maritime jurisdiction to be embodied in the following proposition: 'The exclusive jurisdiction of a nation extends to the ports, harbors, bays, mouths of rivers and adjacent parts of the sea inclosed by headlands, and, also, to the distance of a marine league, or as far as a cannon shot will reach from the shore, along its coasts." 1. Wharton's Intn'l. L. D. Sec. 32. The case of the Louise Simpson, 2 Saw. 57, was a suit to enforce forfeiture of said vessel for a violation of section 4, act of July 27, 1868, extending the laws relating to customs, commerce and navigation over the territory of Alaska, and the executive order of February 4, 1870, prohibiting the importation of "distilled spirits into and within the district of Alaska."

In the decision by Judge Deady, which was affirmed on appeal, it was held that the simple act of taking these spirits within Kotzebue Sound was a violation of the law, "because it was an 'importation of distilled spirits into and within the district of Alaska.' The phrase, 'district of Alaska,' as used in this act and executive order, in my judgment, includes that portion of the sea along its coasts, which lies inside of a line drawn from the promontory of Point Hope to the Cape Prince of Wales." Now it is true that all the waters of this sound are far east of the western line described in the cession of this territory by Russia to the United States, by the treaty of March 30, 1867, but the Russian government claimed and exercised the same authority and jurisdiction over the waters of which Cook's Inlet is a part, as it did over the waters along the western coast of its American possessions, and if the United States now maintains jurisdiction over Kotzebue Sound,

which is about 160 miles between projecting headlands, not land-locked, and in size more than three times the area of Cook's Inlet, it certainly can with much better claim of right maintain jurisdiction over the latter. In re Cooper, 143, U. S. R. 472, which was an application to the Supreme Court of the United States, for a writ of prohibition to the District Court of Alaska, to restrain the enforcement of a sentence of forfeiture and condemnation against the schooner W. P. Sayward, upon the grounds that the court was without jurisdiction in the premises, Mr. Chief Justice Fuller, who delivered the opinion of the court, in speaking of the authority for the seizure of the Sayward said: "If we assume that the record shows the locality of the alleged offense and seizure as stated, it also shows that the officers of the United States, acting under the orders of their government, seized this vessel engaged in catching seal and took her into the nearest port; and that the law officers of the government libeled her and proceeded against her for the violation of the laws of the United States, in the district court, resulting in her condemnation. How did it happen that the officers received such orders? It must be admitted that they were given in the assertion on the part of this government of territorial jurisdiction over Behring Sea to an extent exceeding fifty-nine miles from the shores of Alaska." To apply this reasoning to the case at bar it may be said that Commander Johnson, with the U. S. ship Mohican, was by orders of the government, cruising along the coast of Alaska and within the waters of Cook's Inlet at the time he made this seizure. How then did it happen that he received such orders? It must be presumed, I think, that they were given in the assertion on the part of this government of territorial jurisdiction over these waters. And if I am correct in this, then it is not the province of courts to participate in the discussion of the questions arising out of this claim of jurisdiction or dominion, for they are of a political nature, and not judicial. National dominion and sovereignty may be extended over the sea as well as over the land, and in our government when Congress and the President assert dominion and sovereignty over any portion of the sea or over any body of water, the courts are bound by it. In re Cooper, supra, The James G. Swan 50, Fed. Rep'r 106.

These considerations dispose of the first question raised by the claimant. I think this court has jurisdiction of the case.

The next question is as to the sufficiency of the evidence, when applied to the statute and order of the Secretary of the Treasury, to warrant a decree of condemnation and forfeiture as prayed for in the libel of information.

The claimant corporation was the first lessee of the right to take fur-seals, under the act of July 1, 1870, entitled, "An act to prevent the extermination of fur-bearing animals in Alaska." This lease was executed and delivered August 31, 1870, for the term of twenty years from May 1, 1870. In conducting this business and in connection with it this company established trading posts and stores at different points in the territory, for trading with the natives and buying furs; and also owned and operated a number of vessels for use in carrying goods, wares and different kinds of freight to these trading posts, and in bringing away from them furs and other articles of commerce purchased. In the plant for conducting this extensive business, the company invested a large amount of money, and at the expiration of its lease it still kept up these trading posts and continued to do business along its accustomed lines, except as to privileges granted by the lease, and obligations thereby incurred. The Kodiak was one of its vessels used in the ordinary demands of its business. The testimony bearing directly upon the case is not voluminous and there is no conflict as to the material facts. The locality of the vessel at the time of her seizure has already been stated. The evidence further shows that at said time she had on board eight white men consisting of her necessary officers

and crew, and ten natives or Indians, about thirty more who were out hunting coming on board later in the day; that these natives had their "bedarkes," or canoes with them and were armed with spears, clubs and bows and arrows, used by them in hunting and killing fur-bearing animals, especially sea otters; that they had on board the vessel twelve sea-otter skins caught on the voyage, and five brought on by natives at English Bay, and three of these animals, just killed that day were brought on after the seizure, but that all had been killed by natives, and without the use of firearms. It is positively shown that none of the white men took any part whatever in hunting, from the time the vessel started on this trip until seized at Cook's Inlet. Conceding these facts, however, the prosecution contends that there was such an arrangement; or such collusion between the claimant and the natives as to make it a real party to the killing of these sea-otters, and liable to the penalties of the statute. But I do not think the testimony sustains this contention. All the direct evidence there is on this subject comes from the witnesses for the claimant, and from them it appears that the skins of sea-otters are very valuable, and the taking of them by the natives is the principal source of revenue from which they make their living. M. S. Washburn is the agent of the claimant at Kadiak, Alaska, and has been in its employ for over thirteen years. He testifies that he is well acquainted with the habits and customs of the natives and of their relations to the company, and its manner of doing business with them; that during the winter the natives some times organize hunting parties for taking sea-otters, and in the spring, through their chief or some of their principal men, apply to the company's agent for transportation on one of its vessels to the well-known hunting grounds, and also for advances of provisions and clothing necessary for the hunt; that some-times they wish to be landed near the hunting grounds selected, and hunt from the beach until such time as the vessel can return for them and take them to other grounds or back home; that until the last four or five years it was their custom to hunt from the beach, but since that time they usually remain on the vessel, sleep, cook their own food and eat there, and go out from it in their bedarkes to hunt. He further testifies that the master of the schooner keeps an account against each Indian for all goods furnished; and for each skin brought in and turned over to him for safe keeping, he gives out a check or receipt and at the end of the hunt when the Indians leave the boat they return these checks and draw the skins which they represent. The natives can then sell these skins to any one who will give them the best price for them, as the company has no contract for their purchase, but they usually, though not always, sell them to its agent.

But the company never hires or in any way engages them to hunt, and has no claim nor lien whatever on these skins. This witness and the master both testify that the natives which were on the Kodiak at the time of her seizure were there and were operating under the plan or arrangement as stated, and in no other way. This arrangement certainly accommodates the natives and no doubt enables them to make larger catches then they could without this assistance, but the company gets its benefits from the profits on goods sold and furs purchased, and as it secures most of the trade, those profits probably pay it well for all trouble with the native hunting parties. And it is argued in its behalf that under the order of the Secretary of the Treasury, dated April 21, 1879, it had the right to do what the evidence shows it was doing. The portions of this order relied upon for this purpose, read as follows:

IMPORTANT CASES DECIDED - "The Alaska Herald" - Page Six

"No fur-bearing animals will therefore, be allowed to be killed by persons other than the natives, within the limits of Alaska Territory or in the waters thereof," and, "No vessel will be allowed to anchor in the well-known otter-killing grounds, except those which may carry parties of natives to or from such killing grounds." There is no room for construction or verbal finesse in the first clause quoted; it excepts the natives from the general prohibition against all persons in section 1956, and is, "the consent of the Secretary of the Treasury," that they may kill, under the restrictions of the order, such fur-bearing animals. And the second clause also seems plain enough; it amounts to a permit for vessels to carry natives to and from the otter-killing grounds, and when so engaged to anchor there. The Kodiak was doing nothing more than is permitted by this clause, unless allowing the natives to remain on board to sleep and eat there instead of landing them on the beach, and selling them food and clothing constitutes a violation of the law. But in my opinion these acts do not, of themselves, constitute nor even import a violation of the statute. They might in connection with other evidence tend to prove such violation. But in this case such other evidence, if any, is very slight. It follows from these views that the libel must be dismissed, and it is so ordered.

I hereby certify that I have typed the foregoing six pages of material appearing in the December 12, 1892, issue of "The Alaska Herald" and that the material is a true and correct copy of copy received from National Archives and Records Service, Washington, D.C. from Box 262 of the Records of the Department of Justice.

Beatrice D. Langnes

DX BX

-- COPY --

Department of Justice.
OFFICE OF THE
Solicitor of the Department of Commerce and Labor.
Washington.

C.C. 228

March 31, 1905.

The Honorable

The Secretary of Commerce and Labor.

Sir:

In reply to your request for my opinion as to the authority of this Department to prevent the encroachment of Japanese fishermen upon the salmon fisheries of Alaska, I have the honor to say:

It appears from the petitions and protests which have been filed with you that the business of catching, curing and canning salmon and other fish products of the waters of Alaska, and of the States of Washington, Oregon and California has developed into an industry of great promise. The value of the property now employed in the prosecution of this industry is $20,000,000; the number of men and women employed is 31,000 and the total value of the annual product is about $20,000,000. It is established that there are 300,000 Japanese engaged in the fishing business, a great many of them have for many years been engaged in importing salt salmon, which is a favorite necessity, from the Siberian Coast. Three years ago they came into the American markets and now that they are losing their foothold on the Siberian Coast, it is claimed that they will swarm into Alaskan waters if some preventive action is not immediately taken. Their advent in American waters, it is alleged, will be a menace to the business interests of Washington and Alaska and the action of this Department is urged.

It is well settled that fish in their natural element, unconfined, are public property. They are the property of the nation. The right of a nation to appro-

Letter, Solicitor of the Department of Commerce and Labor to Secretary of Commerce and Labor, March 31, 1905.

-2-

priate its marginal seas and to reserve exclusively to its citizens the right to take fish in such marginal seas is a well recognized principle of international law. (Hall on International Law, p. 158, 4th ed.; Halleck on International law, p. 155, 3rd ed.; Taylor on International Public Law, p. 278)

It is also well settled that the right of a nation to exercise sovereignty and jurisdiction over its marginal seas extends for a distance of at least one marine league from shore. This principle was recognized by the Supreme Court in the case of Manchester vs. Massachusetts, 139 U. S. 256, in which case the court said:

> "We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tide-waters is a marine league from its coast; that bays wholly within its territory not exceedings two marine leagues in width at the mouth are within this limit; and that included in this territorial jurisdiction is the right of control over fisheries, whether the fish be migratory, free-swimming fish, or free-moving fish, or fish attached to or embedded in the soil. The open sea within this limit is, of course, subject to the common right of navigation; and all governments, for the purpose of self-protection in time of war or for the prevention of frauds on its revenue, exercise an authority beyond this limit."

This distance, (one marine league from the shore) was fixed by the supposed range of a cannon in position. The more recent extension of the power of artillery would suggest that the distance might properly be increased from time to time with the increased range of guns. The United States has, however, generally recognized this distance in its negotiations with other nations, and the rule seems to be so far fixed that a nation is bound by it in the absence of express notice that a larger extent is claimed. (Hall on International Law, [illegible], 4th Ed).

It clearly appears, therefore, that Congress by appropriate legislation, subject of course, to treaty rights, may exclude aliens from fishing in

-3-

Alaskan waters, at least within one marine league of the shore, as above defined.

It only remains to be considered, therefore, whether or not Congress has so exercised this power as to authorize the Department of Commerce and Labor to grant the relief sought by the petition. Section 3 of the Organic Act provides:

> "That it shall be the province and duty of said Department to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishery industries, * * *; and to this end it shall be vested with jurisdiction and control of the Departments, bureaus, offices, and branches of the public service hereinafter specified, and with such other powers and duties as may be prescribed by law."

It is to be observed, however, that the section above quoted does not vest in this Department any specific power other than is now or may be prescribed by law. The salmon and other fisheries of Alaska are again referred to in Section 7 of the Organic Act, which is in part as follows:

> "The jurisdiction, supervision and control now possessed and exercised by the Department of the Treasury over the fur seal, salmon and other fisheries of Alaska * * * are hereby transferred and vested in the Department of Commerce and Labor."

A careful reading of the Alaska Salmon Fisheries Act and other laws defining the jurisdiction, supervision and control which the foregoing clause of the Organic Act transferred to and vested in the Department of Commerce and Labor, fails to disclose any authority to prohibit aliens from taking fish in Alaskan waters. The provisions of law which authorize you to establish and enforce such regulations and surveillance as may be necessary to secure compliance with the laws relating to the salmon fisheries of Alaska are general in their application and do not distinguish between aliens and citizens of the United States. You are, therefore, without authority to establish and enforce regulations, applicable only to Japanese fishermen, for the purpose of excluding them. Regulations prohibiting fishing in certain waters or at certain

-4-

times would include and be operative against citizens as well as aliens.

I am, therefore, of opinion that while it is clearly competent for Congress, by appropriate legislation, to exclude aliens from fishing in American waters, it has not yet done so, and until it acts this department is without authority to prevent the encroachment of Japanese fishermen upon the salmon fisheries of Alaska, as requested in the petitions submitted.

The statement, that if the Japanese are allowed to fish in American waters unmolested they will escape the specific tax which others are compelled to bear, is doubtless due to a misapprehension of the law. The section in point (Sec. 460, 31 Stat. 330) provides:

> "That any person or persons, corporation, or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain a license so to do from a district court or a subdivision thereof in said district, and pay for said license for the respective lines of business and trade as follows, to wit:
>
> * * * * * * *
>
> "Fisheries: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish-oil works, ten cents per barrel; fertilizer works, twenty cents per ton."

It is manifest from the foregoing that all persons, corporations or companies engaged in the business of curing and canning salmon and other fish products within the District of Alaska are required to procure a license and pay a tax. The law includes aliens as well as citizens. I am informed that in order to conduct profitable fishing operations it is necessary to maintain on shore a cannery or saltery. Assuming this to be the case the Japanese will not escape the payment of the tax if the law is properly enforced.

Very respectfully,

(Signed) Edwin W. Sims.

Solicitor.

DX BZ

Department of Commerce and Labor
OFFICE OF THE SECRETARY
Washington

June 20, 1906.

Sir:

The Department acknowledges the receipt of your letters of the 23rd and 25th instant, with reference to the Act of June 14, 1906, "To prohibit aliens from fishing in the waters of Alaska."

It is noted that your letter of the 23rd was written under a misapprehension of the facts, and that you state the officers of the Revenue Cutter Service will be instructed with a view to properly enforcing the provisions of the Act.

Respectfully,

Lawrence O. Murray
Acting Secretary.

The Honorable
The Secretary of the Treasury.

Correspondence between Department of Commerce and Labor and the Department of the Treasury, June 20, 1906; June 23, 1906; June 26, 1906; June 28, 1906.

TREASURY DEPARTMENT
OFFICE OF THE SECRETARY
WASHINGTON June 21, 1906.

The Honorable,
Secretary of Commerce and Labor.
Sir:

1. Referring to your letter of the 20th instant calling my attention to "An Act to prohibit aliens from fishing in the waters of Alaska", and my reply to the same of the 21st instant, I have the honor to state that my letter in relation to this subject was written under a misapprehension of the facts.

2. You are informed that, in accordance with your request, pending the issuance of such regulations as the Department of Commerce and Labor may make, the attention of officers of the Revenue-Cutter Service in Alaskan waters will be called to the provisions of said Act, and they will be instructed, in case violations of the Act are discovered, to take such action as the law and the circumstances in each particular case seem to warrant. They will also be directed to report to the Secretary of Commerce and Labor any violations which come to their notice.

Respectfully,

(sgd) [illegible]
Secretary.
G.

TREASURY DEPARTMENT
OFFICE OF THE SECRETARY
WASHINGTON June 21, 1906.

Captain J.C.Cantwell, U.S.R.C.S.,
Commanding U.S.Revenue Cutter McCULLOCH,
Port Townsend, Washington.
Sir:

Your attention is invited to the inclosed copy of an Act of Congress approved June 14,1906 (Public No.[illegible]), entitled "An Act to prohibit aliens from fishing in the waters of Alaska", and you are directed to report to the Department of Commerce and Labor, as soon as practicable, any violations of said Act which you may discover; and in case violations are discovered pending the issuance of regulations and further instructions from said Department, you will take such action as the law and the circumstances, in each particular case seem to warrant. You will be furnished with copies of the regulations as soon as they are issued by the Department of Commerce and Labor.

Respectfully,

(Signed) J. B. [illegible]
Assistant Secretary.

R.
T.
1 inclosure.

TREASURY DEPARTMENT
OFFICE OF THE SECRETARY
WASHINGTON, June 23, 1906.

Captain M.M.Breadbent,U.S.R.C.C.,
Commanding U.S.Revenue Cutter [illegible],
Sitka, Alaska.

Sir:

Your attention is invited to the inclosed copy of an Act of Congress approved June 14,1906 (Public [illegible]), entitled "An Act to prohibit aliens from fishing in the waters of Alaska", and you are directed to report to the Department of Commerce and Labor, as soon as practicable, any violations of said Act which you may discover; and in case violations are discovered pending the issuance of regulations and further instructions from said Department, you will take such action as the law and the circumstances, in each particular case seem to warrant. You will be furnished with copies of the regulations so soon as they are issued by the Department of Commerce and Labor.

Respectfully,
(Signed) J.B.[illegible]
Assistant Secretary.

Inclosure.

copy--

June 23,1906.

The Honorable,
The Secretary of Commerce and Labor.
Sir:

I am in receipt of your letter of the 20th, asking to be advised by the officers of the revenue cutters in Alaskan waters of any violations of the laws prohibiting aliens from fishing in the waters of Alaska pending the issuance of regulations by your Department. I suggest that regulations governing the Revenue-Cutter Service must of necessity be issued by this Department. I will be glad to incorporate any suggestion you may make into the regulations of the service. Any other policy results in divided authority, which is inimical to good administration.

Respectfully,
(Signed) L.M.SHAW,
Secretary.

Received in Secretary Shaw's office
Not checked by Chief Law Clerk
Secretary and Disbursing Clerk

Department of Commerce and Labor
OFFICE OF THE SECRETARY
Washington

RECEIVED
1906.

Sir:

I have the honor to invite your attention to the [illegible] approved June 14, 1906, entitled "An Act to prohibit aliens from fishing in the waters of Alaska." (Public, No. 222.)

Section 5 of this Act makes it the duty of the Secretary of Commerce and Labor to enforce its provisions, and for that purpose authorizes him to employ, through the Secretary of the Treasury, the vessels of the Revenue Cutter Service.

Pending the issuance of such regulations as this Department may find it necessary to make, I have the honor to request that the attention of the officers of the Revenue Cutter Service located in Alaskan waters be called to its provisions; that they be instructed to report to this Department, as soon as practicable, any violations which they may discover; and that in case violations are discovered pending the issuance of regulations and further instructions, they take such action as the law and the circumstances in each particular case seems to warrant.

As soon as the Department issues the regulations, a copy of the same will be forwarded to you.

Very respectfully,

[signature]
Secretary.

The Honorable

The Secretary of the Treasury.

Encl.
1226-C.

DX CH

3199

United States Senate,
COMMITTEE ON MINES AND MINING.

FISHERIES
APR 1 - 1921

March 28, 1921.

COMMISSIONER
APR 1 - 1921
FISHERIES

Dr. Hugh M. Smith,
Commissioner, Bureau of Fisheries,
Department of Agriculture.

Dear Sir:

I have much complaint of Japanese engaging in our Pacific Coast fisheries in United States waters. If this is permitted and continued, it is likely to be the cause of serious trouble. Please advise me in regard to the matter, that is, as to whether or not Japanese are engaging in these fisheries, and, if so, by what authority they are permitted to do so.

I will be obliged to you for any information on the subject.

With sincere regards,

Very truly yours,

[signature]

Letter, Senator Poindexter to Dr. Hugh M. Smith, March 28, 1921.

Subscription $3.00 per Year Foreign Countries $3.50 per Year

Devoted to the Commercial Fisheries

Pacific Fisherman

Seattle, Washington.

MILLER FREEMAN, Publisher
RUSSELL PALMER, Manager

21 April 1920.

COMMISSIONER
APR 26 1920
FISHERIES

Dr. H. M. Smith,
Chief, Bureau of Fisheries,
Washington, D.C.

Sir:

In his statement given to the Associated Press, April 12th, Attorney general Palmer said:

> "According to recent reports to the Department the Japanese in some sections of California have taken advantage of the fact that owing to conditions during the war some of their clandestine fishing within American waters was not prosecuted".

You will find the Japanese both directly and through their white business dummies will frantically protest against the suddenness of this action - that they didn't know their operations were contrary to the laws of this country, etc.

I call your attention to a precedent which the Japanese know all about: During the Russo-Japanese War, Japanese fishing vessels were seized by two gunboats while fishing in the waters of Southeast Alaska and the Japanese were summarily thrown into jail.

There was no note writing about this incident - and no war and the Japs have kept out of Alaska ever since.

It is idle to say the Japanese have been ignorant of our

ALSO PUBLISHERS OF MOTORSHIP DEVOTED TO COMMERCIAL MOTOR VESSELS

Letter, Miller Freeman, Publisher, Pacific Fisherman, to Dr. Hugh M. Smith, April 21, 1920.

coastwise laws. The truth is they have been willing to take the risk because of the enormous returns obtainable by plundering these rich fisheries. If their vessels and gear be now confiscated, those who have been in the business for sometime would now retire with fortunes.

Bear in mind also these Japanese-owned fishing fleets are the best means of illegal admittance of Japanese to this country.

Does not the presence of these aliens in our fisheries constitute a potential menace to our country from a military standpoint?

Yours very truly,

Miller Freeman

MF:AB

DX CI

April 1, 1921.

Hon. Miles Poindexter,
United States Senate,
Washington, D. C.

My dear Sir:

I beg to acknowledge the receipt of your letter of the 28th ultimo making inquiry in regard to Japanese fishermen in Pacific coast waters.

Permit me to advise that in all fisheries over which the federal government exercises jurisdiction aliens are excluded. As you are well aware, however, the fisheries in State waters are under the jurisdiction of the local authorities, and the presence of Japanese and other aliens fishermen in those waters is either in conformity with or in violation of State laws. There has been much correspondence on this subject and the conclusion of this office is that the States are able to remove the situation if they care to do so. It is realized that the exclusion of aliens from the local fisheries would seriously inconvenience the canning and other interests in certain localities, particularly southern California.

Very truly yours,

Commissioner.

Letter, Commissioner H. M. Smith to the Honorable Miles Poindexter, April 1, 1921.

DEFENDANT'S EXHIBIT
CI - Idem
A-45-67 Civ

DX CV

Director, Bureau of Commercial Fisheries, July 28, 1967
Washington, D. C.

Acting Regional Director, BCF, Juneau, Alaska

BCF legislative program for 2nd Session, 90th Congress--
Re your memo of June 1, 1967

Attached are two proposals that might be considered for the 2nd Session of the 90th Congress. The proposal for consolidating three laws governing control of polution would help fulfill a national need; whereas, the second proposal would provide legislative benefit to the Alaska Region. In summary form, our proposals are listed as follows:

(1) Consolidation of three acts governing control of polution (Refuse Act of 1899; Oil Polution Act of 1924; Oil Polution Act of 1961).

(2) Implementation of laws to ensure that U.S. fishermen comply with international agreements pertaining to fisheries in international waters beyond the control of the State of Alaska.

We will expand any of our legislative proposals that you may find to be of interest.

Robert R. Simpson

Attachments

RRSimpson:scl

Memorandum, Robert R. Simpson, Acting Regional Director, to Director, Bureau of Commercial Fisheries, July 28, 1967.

BEST COPY AVAILABLE

(1) ~~Consolidation of Refuse Act of 1899, Oil Pollution~~
Act of 1924, and Oil Pollution Act of 1961

Problem:

There are three basic Acts which pertain to the control of pollution of waters of the United States; the Refuse Act of 1899, the Oil Pollution Act of 1924, and the Oil Pollution Act of 1961. These Acts are administered by three different agencies and it is an extremely difficult problem for field enforcement personnel to determine which Act applies to a specific violation and to determine which agency is charged with the enforcement responsibility. Our people encounter considerable difficulty in keeping abreast of these laws and amendments and find them very difficult to understand and enforce. We believe that for the most part the cumbersome nature of these laws have collectively made them ineffective.

II. Solution:

We recommend that the above Acts be consolidated into one Act, and that the Secretary of the Interior be charged with the basic responsibility for its administration.

(2) Laws needed to Ensure that U.S. Fishermen Comply with
International Agreements in Waters Beyond Control of
the State (of Alaska)

I. Problem:

It was determined that use of State of Alaska fisheries laws would be adequate to ensure U.S. compliance with the current king crab agreements. This approach is not sufficient because the Alaska laws are applicable only (1) to waters subject to State control; that is, the three-mile territorial sea with possibly a few exceptions; and/or (2) to Alaska citizens, even if they are fishing upon international waters; and/or (3) to any person bringing fish into waters or lands subject to Alaska control. Therefore, a U.S. vessel manned by U.S. citizens who were non-Alaskans could fish trawls more than three miles offshore in the pot sanctuary specified by the agreements and take king crab regardless of size or sex, eventually landing their catches outside Alaska. The above operation would not be in violation of Alaska laws. It would, however, violate many provisions of the U.S. king crab agreements with the U.S.S.R. and Japan and Federal officials would be unable to halt the operation since there are no U.S. laws implementing the agreements.

Another factor which should be considered is the similar provisions in both the U.S.S.R. and Japanese king crab agreements stating that each government will apply measures to its nationals and vessels to control king crab fishing as specified in the agreements. Noting the lack of Federal legislation making terms of the agreements applicable to all U.S. citizens and vessels and recognizing that reliance upon Alaska laws is not entirely sufficient, it appears the United States could justifiably be accused of not complying with the agreements.

II. Solution:

Legislation by the U.S. might profitably be aimed at a basic act allowing the Secretary of the Interior, probably with the advice of the contiguous state, to make regulations controlling the fishing efforts of U.S. vessels outside of the territorial waters of the U.S. This would provide a means of controlling trawling by our own fishermen, both in the fixed gear areas off Kodiak and the pot

sanctuary off Unimak Island. Such authority would be a gesture of good faith on our part and, in addition, may turn out to be vital in the future if the U.S. groundfish industry expands to the Kodiak area.

Our present dependence on State of Alaska regulations is not a healthy situation because it removes any possible action from our own enforcement branch.

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF COMMERCIAL FISHERIES
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR, BUREAU OF COMMERCIAL FISHERIES

JUN 1 1967

Memorandum

To: Assistant Directors, Regional and Area Directors

From: Director, Bureau of Commercial Fisheries

Deadline: Aug 1, 196

Subject: Bureau of Commercial Fisheries Legislative Program for the 2nd Session, 90th Congress

Recently we were asked to provide the Department with a brief survey of legislative possibilities for the 2nd Session of the 90th Congress. The request had a 24-hour deadline so there was not sufficient time for any survey in depth. A copy of the Bureau's response to this request is attached for your information.

In the early Fall we will be asked for our program for the next Session and I would like to have you begin to develop this program now. A copy of the Departmental Legislative Program containing our Bureau program for the 1st Session was sent to the Regions and Area on December 16, 1966. A copy of the Bureau program was excerpted and distributed to the Assistant Directors that same date. You may wish to refer to the current program in developing your contribution to our program for the 2nd Session.

It is my hope that you will consider each program you administer and determine whether additional legislation is required to extend, strengthen, or support what is being done. A question to be asked is whether there are gaps in our authority which should be filled either to begin new work or to supplement what we are now doing.

Please respond to this memorandum by August 1, 1967. This deadline has been set to permit time for some input from laboratories and stations.

In your submissions there should be a description of the problem, an explanation of the legislation required, sufficient facts upon which we can base a case for the legislation, and some forecast of what results might be accomplished.

It is my view that we need to make now a complete review of our legislative tools to detect gaps that need to be filled.

H. E. Crowther

Attachment

Memorandum, H. E. Crowther to Assistant Directors, Regional and Area Directors, June 1, 1967.

DX CY

WTD-IFC

September 10, 1930.

Russell,
Bureau Fisheries
Seattle, Washington

Maps showing tentative territorial waters sent you and Winn are to be treated as strictly confidential Stop Notify Winn

O'Malley.

Telegram, O'Malley to Russell, September 10, 1930.

WTD-IFC

October 15, 1930.

Russell,
Bureau Fisheries,
Seattle, Washington.

Under no circumstances should maps be made public Stop Very misleading and injurious impressions might result Stop These maps have no official significance or sanction and were prepared by Tariff Commission for Government use simply to facilitate the investigation it is conducting regarding catches of fish by foreign vessels

O'Malley

Copy left with Dr. H.F. Worley
of Customs Service, detailed
to Tariff Commission. 10/17/30
WDB.

Telegram, O'Malley to Russell, October 15, 1930.

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COMMISSIONER FISHERIES=

WASHINGTON DC=

OCONNOR ADVISES CUSTOMS HAVE LARGER SUPPLY MAPS SHOWING TENTATIVE TERRITORIAL WATERS SAME AS FORWARDED WINN JUNEAU SEPTEMBER TENTH/OCONNOR DESIRES BE ADVISED WHETHER BUREAU HAS ANY OBJECTIONS THESE BEING SENT OUT PUBLIC=/

RUSSELL.

COMMISSIONER OCT 15 1930 FISHERIES

Discuss before answering

THE QUICKEST, SUREST AND SAFEST WAY TO SEND MONEY IS BY TELEGRAPH OR CABLE

Telegram, Russell to Commissioner, Fisheries, October 15, 1930.

DX DB

Office Memorandum • UNITED STATES GOVERNMENT

TO : The Director — DATE: February 29, 1956

FROM : Chief, Branch of Alaska Fisheries

SUBJECT: Alaska commercial fishery regulations, 1956

In the near future, there will be submitted for approval the annual revisions of the Alaska fishery regulations. While these revisions are rather extensive, most of them are non-controversial and of slight significance. There are, however, five important changes for consideration, and, for that reason, I am calling attention to them now. These are: (1) prohibition of fishing, except trolling, on the high seas off the Alaska coast by U. S. nationals, (2) registration and limitation of fishing boats to one operating area to be selected by the operator, (3) limitation on the days per week of fishing in the Bristol Bay area, depending upon the number of units of gear operating, (4) temporary closure during 1956 of 15 trap sites in the Prince William Sound area, and (5) continuation during 1956 of the pink salmon restoration program in Southeastern Alaska involving temporary closure of traps accounting for 50 percent of the trap catch of the area, and closure of extensive seine areas in the immediate vicinity of important salmon streams.

It is proposed to issue a notice of intent concerning the prohibition of high seas salmon fishing off the Alaska coast. This will put the industry and fishermen on notice that such regulations will be forthconing at a later date to be effective in 1956. They are being formulated now, but are not ready at this time, and there is an urgent demand that the other regulation changes be made known as soon as possible for planning purposes by the industry.

The Alaska fishery regulations as presently issued refer only to fishing in Territorial waters. It has been demonstrated that salmon can be taken in commercial quantities on the high seas to such an extent as to nullify protective measures imposed within Territorial limits. The Solicitor, on April 22, 1955, in Memorandum M-36273, held that the Secretary of the Interior is authorized by the North Pacific Fisheries Treaty Act of August 12, 1954, to regulate the taking of salmon on the high seas in areas contiguous to the Territorial waters of Alaska. The United States Section of the North Pacific Fisheries Commission has requested that such action be taken, and the Alaska fishing industry in general favors the prohibition of all salmon fishing, except trolling, by U. S. nationals on the high seas adjacent to Alaska.

Memorandum, Seton H. Thompson, Chief, Branch of Alaska Fisheries, to the Director, February 29, 1956.

With regard to the proposed regulation known as area licensing, which would permit each fishing vessel operator to select one district, but confine his operations to that district, there is divided opinion among both fishermen and operators. The objective of this regulation seems to be generally accepted, but some of the operators of mobile gear fear that it will favor those using fixed gear. The Service feels that it will benefit the operators of both forms of gear equally and tend to give some stability to fishing and to regulations governing fishing in each operating area. At the present time, there is extensive movement of gear from area to area, bringing full impact of intense effort on the peak of each run as it occurs. This would be eliminated under the proposed regulation. We believe it has merit as a conservation measure and will be generally acceptable after it is put into effect. This type of restriction is new in the Alaska fisheries, but is authorized by the Solicitor's Memorandum M-36276 of April 22, 1955.

The proposed limitation on fishing time in Bristol Bay is somewhat different than it has been in the past. This year, we propose to include in the regulations a table showing the allowable number of days fishing each week with varying numbers of units of gear in operation. If the number of units of gear is the same as in 1955, fishing will be limited to 2 days per week. If the number of units of gear can be reduced by industry consolidations, a greater amount of fishing time will be allowed. This proposed regulation will put the burden of responsibility on the industry to effect gear limitations. In the past, the responsibility has been on the Service to curb fishing time after the season commenced when the extent of fishing effort became known. This proposed regulation should work to the advantage of all concerned.

Prince William Sound has been closed to pink salmon fishing for 2 years, and will reopen this year under these proposed regulations. In response to a request for voluntary limitation of fishing effort in this area until restoration is complete, the operators have offered to surrender for 1956, 15 trap sites which otherwise would be fished. This closure is in the interest of conservation and is similar, though less drastic, than the trap curtailment program in Southeastern Alaska.

Definite gains have been achieved by the restoration program imposed on the Southeastern Alaska pink salmon fishery in 1954 and 1955. The spawning escapements in both years were better than in the parent years, but still not adequate to restore the runs fully. There is almost unanimous opinion that the restoration program should be continued through 1956. If it should develop that the runs are better than now anticipated, it will be possible to utilize them to the maximum by increasing the fishing time for the authorized gear in the area.

A complete itemized statement and justification of each proposed change will accompany the revised regulations. This is merely advance notification of the important changes contemplated.

Seton H. Thompson

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SUMMARY OF PROCEEDINGS

CONFERENCE ON

CO-ORDINATION OF FISHERIES REGULATIONS

BETWEEN

CANADA AND THE UNITED STATES OF AMERICA

SEATTLE, WASHINGTON, FEBRUARY 27-28, 1957

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CONFERENCE ON CO-ORDINATION OF FISHERIES REGULATIONS Between Canada and The United States. "SUMMARY OF PROCEEDINGS" Seattle, Washington February 27-28, 1957

CONFERENCE ON CO-ORDINATION OF FISHERIES REGULATIONS

SUMMARY OF PROCEEDINGS

Representatives of Canada and the United States met in Seattle, Washington on February 27 and 28 to discuss co-ordination of specific fisheries regulations for the Pacific area pertaining to offshore salmon net fishing, salmon troll fishing and trawl fishing for petrale sole and black cod.

Mr. G. R. Clark, Deputy Minister of Fisheries, Ottawa, Canada and Mr. W. C. Herrington, Special Assistant to the Under Secretary of State, Washington, D. C., headed the Canadian and United States Delegations respectively. A list of those attending the conference is appended.

Offshore salmon net fishing:

The representatives of both Canada and the United States agreed that development of major offshore salmon net fisheries posed a serious management problem and that regulation of such fishing in the eastern Pacific ocean was essential to the conservation of salmon stocks of North American origin.

The Canadian Delegation stated that Canada was prepared to prohibit her fishermen from taking salmon in offshore waters between 35° and 60° north latitude, except by trolling. For the purpose of this proposed regulation, offshore waters would include the high seas off continental United States and Alaska and the waters seaward of a line joining Bonilla Point and Tatoosh Island at the entrance of the Strait of Juan de Fuca commencing at the point of intersection with the international boundary line; thence northwesterly along the shoreline of Vancouver Island to Cape Beale; thence along a line projected therefrom to Amphitrite Point; thence along the shoreline of Vancouver Island to Cox Point; thence along a line projected therefrom to Lennard Island Light; thence along a line projected therefrom to the westernmost point of Vargas Island; thence along a line projected therefrom to Rafael Point on Flores Island; thence along a line projected therefrom to Estevan Point; thence along a line projected therefrom to Zajo Point; thence along a line projected therefrom to Clarke Point on Brooks Peninsula; thence along a line projected therefrom to Solander Island Light; thence northerly along a line projected therefrom to Lown Point; thence along a line projected therefrom to Cape Russell; thence along a line projected therefrom to Cape Scott Light; thence easterly along a line projected therefrom to Cape Sutil; thence northerly along a line projected therefrom to Herbert Point on Calvert Island; thence northwesterly along a line projected therefrom to Currie Islet Light; thence along a line projected therefrom to Nob Rock; thence along a line projected therefrom to the southernmost point of the Estevan Islands; thence along a line projected therefrom to Terror Point on Banks Island; thence along a point projected therefrom to Bonilla Island Light; thence northerly along a line projected therefrom to Butterworth Rocks; thence along a line projected therefrom to a position 3 miles west of the northwesterly point of Dixon Island; thence along a line projected therefrom due north to the international boundary line between Canada and Alaska; except the waters along the coast of the

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Queen Charlotte Islands inside a line commencing at Langara Island Light and projected easterly therefrom to Chag Rock; thence along a line projected therefrom to Miah Point; thence along a line projected therefrom to Kate Point; thence southerly along the eastern shoreline of Graham Island to Lion Point at the entrance to Skidegate Inlet; thence along a line projected therefrom to Gray Point on Moresby Island; thence along a line projected therefrom to Boudder Point on Burnaby Island; thence along a line projected therefrom to Garein Rocks Light; thence along a line projected therefrom to Tait Point on Kunghit Island; thence along a line projected therefrom to Sr. James Island Light; thence northwesterly along a line projected therefrom to Mehcan Fraser Point on Moresby Island; thence along a line projected therefrom to Chads Point; thence along a line projected therefrom to Kitgoro Point; thence along a line projected therefrom to the northwesternmost point of Hippa Island; thence along a line projected therefrom to Tian Head on Graham Island; thence along a line projected therefrom to the northwesternmost point of Frederick Island; and thence northerly to the point of commencement at Langara Island Light.

The Canadian Delegation advised the Conference that the reference points used to describe the proposed line beyond which salmon fishing, except by the use of troll gear, would be prohibited were taken from Canadian Hydrographic Charts No. 3593, 3744 and 3844 and that it might be necessary to adjust the line somewhat in order to describe it adequately for enforcement purposes. Further, such a restriction on offshore salmon fishing could be brought into effect almost immediately if general agreement were reached during the conference.

The United States Delegation stated that:

(1) The Secretary of the Interior now prohibited the taking of salmon by United States nationals in the Pacific Ocean, outside the waters of Alaska, north of Dixon Entrance and east of 175° west longitude, except by means of trolling.

(2) Federal legislation will be sought to extend in time for this season the geographical area of this regulatory power of the Secretary of the Interior as far south as approximately 45°30' north latitude.

(3) The State of Washington was taking action through its legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the State seaward of a line commencing at the point of intersection of the international boundary line in the Strait of Juan de Fuca and a line drawn between Sail Rock in Clallam County and Owen Point at the entrance to Port San Juan on Vancouver Island; thence southerly along a line projected therefrom through Sail Rock to the shoreline; thence westerly along the state shoreline of the Strait of Juan de Fuca to Cape Flattery; thence southerly along the state shoreline of the Pacific Ocean crossing any river mouths at their most westerly points of land, to Point Brown at the entrance to Grays Harbour; thence southerly along a line projected therefrom to Point Chehalis Light on Point Chehalis; thence southerly from Point Chehalis along the state shoreline of the Pacific Ocean to Cape Shoalwater Light at the entrance to Willapa Bay; thence southerly along a line projected therefrom to Leadbetter Point; thence southerly along

the state shoreline of the Pacific Ocean to the inshore end of the North jetty at the entrance to the Columbia River; thence southerly along a line projected therefrom to the knuckle of the South jetty at the entrance of said river.

This action would also make it unlawful for any citizen of the state to take salmon with any type of net in the international waters of the Pacific Ocean.

The Bill containing these provisions had been introduced in the State Legislature but could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(4) The State of Oregon was taking action through its legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the State seaward of a line commencing at the point of intersection of the California-Oregon state boundary with the Pacific Ocean high water mark shoreline; thence northerly along such high water mark shoreline, including extensions thereof across the waters of the bays or tidal areas of streams emptying into the Pacific Ocean, to the mouth of the Columbia River; thence northerly across the waters of the Columbia River along the line designating and defining the mouth of such river under ORS 511. 130 to the point of intersection of such line with the Oregon-Washington state boundary.

This action would also make it unlawful for any citizen of the state to take salmon with any type of net in the international waters of the Pacific Ocean.

The Bill containing these provisions had been introduced in the State Legislature but could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(5) The State of California was taking action in its Legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the state and by its citizens in international waters of the Pacific Ocean.

This Bill could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(6) If the State Bills fail of enactment, Federal Government legislation will be sought to secure in time for this season Federal Government regulation in the high seas as far south as required to provide protection for all salmon stocks located in the eastern Pacific Ocean off continental United States.

The lines proposed by the Canadian and United States Delegations were acceptable to the Conference as a whole with the exception of the following specific areas:

(a) The location of the line across the Strait of Juan de Fuca.

(b) The location of certain segments of the line proposed along the west coast of Vancouver Island.

(c) The location of the line described in the Alaska Fishery Regulations.

A sub-committee was appointed to consider and report on the location of the line across the Strait of Juan de Fuca. The United States Delegation requested an opportunity to give further consideration to the location of the line along the west coast of Vancouver Island as proposed by the Canadian Delegation and the Canadian Delegation requested an opportunity to consider the location of the line in Alaska as described in the Alaska Fishery Regulations.

Salmon troll fishing:

The United States Delegation stated that different regulations with regard to open season and size limit applied to the troll fisheries off the coast of continental United States, Canada and Alaska and that in their view, such regulations were necessary to conserve the salmon stocks and thus it would be desirable to have these conform in the respective areas.

The situation with respect to the season applicable to silver or coho salmon was satisfactory since California, Oregon and Washington had adopted a June 15 to October 31 season in 1949, Canada had adopted the same season in 1952 and the Alaska season was somewhat more restrictive extending from July 1 to September 20.

A season for chinook or spring salmon extending from April 15 to October 31 was adopted by the states of Oregon and Washington in 1953 and the season in the state of California is more restrictive extending from May 1 to September 30. The season in Alaska extends from April 15 to October 31 while the closed season in Canadian troll fishing regulations extends from December 1 to January 31 in the following year.

The United States Delegation stated that regulations for the coming season in Southeast Alaska (which is the only area trolled in Alaska) were not yet finalized by publication. There was excellent possibility that the opening date for the chinook or spring salmon would be changed to April 15; however, with 30 days notice required after publication, entry into effect would occur this year some days after March 15.*

The Canadian Delegation stated that the necessary action would be taken to have the Canadian season for the chinook or spring salmon troll fishery changed to April 15 to October 31 and that this would be put into effect before the coming season.

A minimum size limit of 26 inches total length for chinook or spring salmon caught by trolling was adopted by the states of California,

* Editor's note: The change to April 15 for Southeast Alaska was published in the Federal Register on March 6, 1957. See XXII FR 1379. Accordingly, the new regulation became effective April 6, 1957.

Oregon and Washington in 1949 and a slightly larger minimum size limit applies in Alaska since a 26 inch fork length measurement had been adopted. No minimum length for troll-caught chinook or spring salmon has been established in Canada but there is a general prohibition against retention of any salmon weighing less than 3 pounds. Following a general exchange of views on regulation of the salmon troll fisheries the matter was referred to a sub-committee for consideration and report.

Trawl fishing:

The United States Delegation outlined certain recent developments in the otter trawl fisheries which demonstrated in their view the necessity for further restrictions particularly with respect to the fishing season for petrale sole, a minimum size limit for black cod and the mesh size authorized for trawl nets.

After a brief discussion a sub-committee was appointed to give consideration to these particular aspects of the trawl fisheries and to prepare a report for submission to the Conference.

Sub-committee reports:

At the concluding session of the Conference, reports were presented by the chairmen of the sub-committees. After discussion these were accepted and approved by the Conference. The full text of each report is appended.

Major agreements reached:

The following major agreements were reached between the Canadian and United States Delegations during the Conference:

(1) The location of the line delimiting offshore waters as proposed by the Canadian Delegation was appropriate with the following shoreward adjustment on the west coast of Vancouver Island beginning at Enfact Point on Flores Island thence along a line projected therefrom to the light and whistle buoy at the entrance to Ahuru Cove; thence along a line projected therefrom to Hesquiat Point; thence westerly along a line projected therefrom to Matlahaw Point; thence following the shoreline to Folgate Point; thence northerly along a line projected therefrom to Escalante Point; thence along a line projected therefrom to Boulder Point on Hootla Island; thence following the shoreline of Hootla Island to Ferrer Point; thence along a line projected therefrom to the light and whistle buoy at the entrance to Kyuquot Channel; thence along a line projected therefrom to Lookout Island Light; thence along a line projected therefrom to a point at the southwestern entrance to Tarmahi Inlet; thence westerly along a line projected therefrom to Clerke Point on Brooks Peninsula;

(2) The location of the line delimiting offshore waters across the entrance to the Strait of Juan de Fuca proposed by the Canadian Delegation, namely the Bonilla Point - Tatoosh Island line, should be adopted provisionally and scientific and statistical studies should be undertaken to determine the composition and migratory movements of the silver or coho salmon stocks on each side of the line in order that the line may be relocated if necessary as a conservation measure based on scientific findings.

In this connection it was understood that the research results would be reviewed within two years by the interested agencies and that interim regulatory action could be taken by the State of Washington and Canada during the two year period if the research results showed that such action was required to conserve the silver or coho salmon stocks;

(3) The location of the remainder of the line delimiting offshore waters as proposed by the United States Delegation was appropriate;

(4) The line described in the Alaska Fishery Regulations was appropriate.

In this connection it was understood that the closing lines connecting headlands in Alaska, which were discussed and which serve as a baseline in some areas for the measurement of the seaward limits of the "waters of Alaska" as this expression is used in the Alaska Fishery Regulations, are not definitive. On the request of the Canadian Delegation for a chart showing the definitive line the United States Delegation agreed to submit such a chart as soon as possible;

(5) All the lines delimiting offshore waters agreed to during the Conference would be made effective for the coming season and consideration would be given to adjusting the lines whenever experience indicated that an adjustment was required;

(6) A minimum size limit of 26 inches total length, or optionally an equivalent weight limit, was to be applied to all chinook or spring salmon caught by troll gear in offshore waters;

(7) The open season for trolling for chinook or spring salmon was to be established as April 15 to October 31 except in California where the season now is more restrictive.

(8) A uniform minimum size limit for silver or coho salmon caught by troll gear in offshore waters was not required at this time;

(9) A uniform closed season for petrale sole extending from December 20 to April 15 of the following year will be established for the trawl fishery beginning with the coming season.

(10) A maximum incidental catch of 3,000 pounds of petrale sole per trip - not to exceed two trips per month - will be authorized for the Oregon, Washington and British Columbia trawl fisheries and California will take such action as necessary to prevent the use of California ports for the purpose of evading regulations applicable in the northern areas.

(11) All other recommendations presented in the reports of the sub-committees, copies of which are appended, were accepted and it was agreed that the agencies concerned should carry out the several recommended studies as soon as possible.

(12) It was agreed to maintain close and continuing liaison between the Pacific Marine Fisheries Commission and the Department of Fisheries in Canada at the technical and administrative levels.

It was agreed that the draft press release, which had been prepared by the press committee, and the precis of the meeting would be reviewed and approved by the chairmen of the Canadian and United States Delegations. A copy of the press release is appended.

The importance of the research programme agreed to by the two Delegations and designed to determine the proper location of the line delimiting offshore waters at the entrance to the Strait of Juan de Fuca based on scientific study of the silver or coho salmon stocks in the area was pointed out and the Conference expressed the hope that the agencies concerned in Canada and the State of Washington would give this project a high priority both from the standpoint of essential funds and personnel.

The chairmen of the Canadian and United States Delegations expressed thanks to their respective advisory groups and to the technical consultants to the Conference for their contribution to the deliberations.

The Conference closed at 5:30 P.M., February 28, 1957.

LIST OF THOSE ATTENDING THE CONFERENCE

FROM CANADA:

Delegates:

G. R. Clark, Deputy Minister of Fisheries, Ottawa, Canada.

Wm. M. Sprules, Department of Fisheries, Ottawa.

A. J. Whitmore, Department of Fisheries, Vancouver,

C. R. Levelton, Department of Fisheries, Vancouver.

Advisors:

G. T. Brajcich, Fishing Vessel Owners Assn. of British Columbia

J. H. Johnson, Prince Rupert Fishermen's Cooperative Assn. Prince Rupert.

F. Probert, British Columbia Gillnetters
F. Rolley

James D. Foote, Canadian Consul

H. Stevens, United Fishermen and Allied
W. J. Canic, Workers Union

C. Joe, Native Brotherhood of British Columbia.

J. Cameron, International North Pacific Fisheries Commission

R. Nelson, Fishing Association of
D. F. Miller, British Columbia
S. R. Furney,

R. Stanton, Pacific Trollers

D. J. Milne, Fisheries Research Board
K. S. Ketchen, of Canada, Nanaimo
A.W.H. Needler,

J. L. Hask, Fisheries Research Board of Canada, Ottawa.

FROM THE UNITED STATES:

Delegates:

Wm. C. Herrington, Special Assistant to the Under Secretary of State.

Warren P. Looney, Department of State

W. M. Terry, United States Fish &
John T. Gharrett, Wildlife Service.

R. L. Jones, Chairman, Pacific Marine Fisheries Commission, Oregon.

M. C. James, Director, Oregon Fish Comission

R. S. Croker, Pacific Marine
Eugene D. Bennett, Fisheries Commission,
California.

C. A. Nelson, Puget Sound Gillnetters Assn. Mount Vernon.

J. N. Plancich, Fishermen's Packing Corporation, Anacortes.

N. Mladinich, Purse Seine Vessel Owners Association, Tacoma.

M. C. Bell, Acting Director, Washington Dept. of Fisheries

Advisors:

Senator E.A.C. Johnson and
Representative F. P. Belotti, California Legislature

W. O. Riley - all of Pacific Marine Fisheries Commission," California

LIST OF THOSE ATTENDING THE CONFERENCE

FROM THE UNITED STATES:

Advisors:

Senator H. M. Jackson and
Representative C. Kiga, Washington State Legislature.

Representative W.H. Holmstrom, Chairman and Representative R.G. Ellstrom, member, Legislative Fish and Game Committee, Oregon.

F. L. Wright, Pacific Marine Fisheries
C. K. Phenicie, Commission, Oregon.

H. J. McCool, Fishermen's Cooperative
B. G. Johnston, Association, Seattle.

H. Lokken, Fishing Vessel Owners Association, Seattle

N. P. Kuljis, Fishermen's Marketing Association, Seattle

J. S. Wilkinsen, Puget Sound Canners

H. A. O'Neill, Puget Sound Canners Association of Pacific Fisheries.

M. Edmunds, Garibaldi, Oregon

J. J. Mijich, Pacific Marine Fisheries Commission, Seattle.

J. Lomm, Puget Sound Gillnetters Assn.

TECHNICAL CONSULTANTS TO THE COMMISSION:

Robert J. Schaettler, Chairman, International Pacific Salmon Fisheries Commission.

Loyd Royal, Director, International Pacific Salmon Fisheries Commission.

 APPENDIX NO. 2

REPORT OF THE SUB-COMMITTEE ON TROLL REGULATIONS

The Committee recommends a 26 inch total length minimum size limit on chinooks in those waters that are considered to be outside waters by the respective jurisdictions. Optional equivalent weight limit would be satisfacto.

In making this recommendation the committee recognizes that biological a practical considerations are both involved and that biological evidence to da from all areas does not indicate that this proposal is essential as a conservation measure. Consequently, the committee recommends further study of the problem

The committee endorses the principle of setting aside nursery areas for silvers and chinooks for specific time intervals as the necessity is determin by study of local conditions.

The committee considered minimum size limits on silvers and concluded th there is no necessity for uniform size limits at this time.

APPENDIX NO. 3

REPORT OF THE SUB-COMMITTEE ON TRAWL REGULATIONS

It is recommended:-

1. That a uniform closed season from December 20 to April 15 for petrale sole be established.

2. That a maximum incidental catch of 3,000 pounds of petrale per trip not to exceed 2 trips per month be permitted in Oregon, Washington and British Columbia. California to take such action as necessary to prevent the use of their ports for the purpose of evading regulations in northern areas.

3. That both countries institute studies looking toward further protection of petrale sole and of the other species taken in the otter trawl fishery in international waters.

4. That both countries institute studies looking toward the establishment of uniform trawl mesh sizes so as to eliminate as far as possible the catching of undersized fish.

5. That both countries institute studies looking toward the establishment of a uniform minimum size for black cod in the two countries.

6. That no recommendation is made on a closed season on black cod as the present season has not demonstrated that it is of value from the standpoint of conservation and for this reason may be abandoned.

7. That the present state of the otter trawl fishery clearly demonstrates the need for procedures which will enable the two countries to collaborate informally in the formulation of regulations which are uniform as far as uniformity is desirable and necessary.

 APPENDIX No. 4

REPORT OF THE SUB-COMMITTEE ON THE LOCATION OF THE LINE DELIMITING OFFSHORE WATERS AT THE ENTRANCE TO THE STRAIT OF JUAN DE FUCA

It is recommended that the Sandilla-Tatoosh line be provisionally adopted, provided that scientific investigations and statistical studies be undertaken to develop further knowledge as to the following:

(1) Determination of the composition of the Swiftsure stock of silver or coho salmon compared with that of stocks occurring inside the Sandilla-Tatoosh line east to the Sail Rock-Owen Point line or farther east as might appear necessary and desirable during various summer months.

(2) Evidence of maturity of silver or coho salmon in the study area.

(3) Determination of the timing and extent of eastward migration of feeding silver or coho salmon in the Strait of Juan de Fuca.

Further it is recommended that the necessary research programs be designed to cover a two-year period and that the results of the research be reviewed at the end of that time by the interested agencies in order that the location of the provisionally adopted line may be reconsidered in the light of new knowledge.

It is recommended that the research undertaken be co-ordinated with that of other agencies, particularly with reference to tagging or marking programmes, whenever practicable.

 APPENDIX NO. 5

NEWS RELEASE: - March 1, 1957.

AGREEMENT REACHED ON U.S.-CANADIAN FISHERY REGULATIONS

United States and Canadian conferees today recommended coordinated regulations in the oceanic salmon and certain other fisheries in the Pacific Ocean. Nets in off-shore salmon fishing will not be permitted. The spring or chinook salmon troll fishing season will open not earlier than April 15 and will close October 31. The June 15 opening date on trolling for silvers or cohos will remain unchanged. Troll-caught chinook salmon will be required to be 26 inches minimum length or an equivalent minimum weight. In the petrale sole fishery, a uniform closed season from December 20th to April 15 will be established.

At present Canada does not have seasons for troll-caught chinooks or a minimum length regulation, or a season on petrale sole. The coast states this year have set an April 15 opening date for troll-caught chinook landings, and closed the petrale fishery from February 1 through April 15. Some net fishing for salmon has been carried out on the high seas exterior to the Strait of Juan de Fuca. In 1955 a gill-net fishery in "outside" waters began to develop.

Washington, Oregon and California are moving the needed laws through the current Legislatures. Canada can put into effect by administrative action such regulations as are necessary. It is planned that this coordinated system of regulations will take effect in the three states and Canada in time for the coming fishing seasons. Failure of action in any one of the four jurisdictions may jeopardize the entire program.

The meeting represents a long step forward in securing coordination of regulations to conserve Pacific Coast fisheries. Hitherto, the measures of Washington, Oregon and California have been coordinated through the Pacific Marine Fisheries Commission. The recommendations of the conferees when approved by the Legislatures and administrative action taken by Canada will mean that regulations along the entire Pacific Coast will be coordinated.

The meetings, which were held in the Salmon Bay Regional Office of the Washington Department of Fisheries, were attended by officials from Washington, D. C., Ottawa, members of the Legislatures and officials of the Pacific Coast states, as well as commissioners of the Pacific Marine Fisheries Commission and advisors from industry.

The recent growth of net salmon fishery threatened existing United States and Canadian salmon conservation programs. Such fishing already is forbidden in waters off the coast of Alaska by order of the Secretary of the Interior.

The conference also took note of a special problem which exists in the area adjacent to the Sandilla Point-Tatoosh Island line at the entrance to the Straits of Juan de Fuca, and agreed that mutual solutions should be investigated by Canada and the State of Washington in these waters.

ANNEX No. 5 (Continued)

Finally, arrangements on procedures for continued international review of coordinated regulations were reached.

In attendance were Canadian Delegates G. R. Clark, Deputy Minister of Fisheries, Ottawa; Wm. M. Sprules, Department of Fisheries, Ottawa; and from the Department of Fisheries, Vancouver, B. C., A. J. Whitmore and C. H. Lovelace.

Canadian Advisors were George T. Brajcich, Fishing Vessel Owners Association of British Columbia; John H. Johnson, Prince Rupert Fishermen's Cooperative Association at Prince Rupert; F. Trebert and F. Kelley of British Columbia Gillnetters; James D. Foote, Canadian Consul; Roger Stevens and Wm. J. Castle of United Fishermen and Allied Workers Union; Clarence Joe, United Brotherhood of British Columbia; J. Cameron, International North Pacific Fisheries Commission; R. Nelson, D. F. Miller and S. B. Murray of Fishing Association of British Columbia; R. Stanton of Pacific Trollers; D. J. Kaino, K. S. Ketchen and A. W. H. Needler, Fisheries Research Board of Canada, Nanaimo; and J. L. Kask, Fisheries Research Board of Canada, Ottawa.

The United States Delegates were Wm. C. Herrington, Special Assistant to the Under Secretary of State; Warren F. Looney, Department of State; W. M. Terry and John T. Charrett of United States Fish and Wildlife Service; M. C. Sands, Director, Oregon Fish Commission; N. L. Jones, Chairman, Pacific Marine Fisheries Commission, Oregon; Richard S. Croker and Eugene D. Bennett of Pacific Marine Fisheries Commission, California; Carl A. Nelson, Puget Sound Gillnetters Association, Mount Vernon; John N. Pillarich, Fishermen's Packing Corporation, Anacortes; Nick Mladinich, Purse Seine Vessel Owners Association, Tacoma; and Milo C. Bell, Acting Director, Washington Department of Fisheries.

United States Advisors were Senator E. A. C. Johnson, Representative F. P. Belotti, California Legislature, and W. O. Riley, all of Pacific Marine Fisheries Commission, California; Senator H. M. "Harney" Jackson and Representative Chet King of the Washington State Legislature; Representative Wm. H. Holmstrom, Chairman and Representative Robert O. Elfstrom, member of Legislative Fish and Game Committee, Oregon; Floyd L. Wright and Charles R. Thatcher of Pacific Marine Fisheries Commission, Oregon; H. J. McNeal and Robert T. Johnston, Fishermen's Cooperative Association, Seattle; Harold Lokken, Fishing Vessel Owners Association, Seattle; J. Lowell, Puget Sound Gillnetters Association; Dick F. Kuljis, Fishermen's Marketing Association, Seattle; John S. Wilkinson, Puget Sound Canners; Harold A. O'Neill, Puget Sound Salmon Canners, Inc., Association of Pacific Fisheries; Mark Edwards of Garibaldi, Oregon; and Joseph T. Mijich, Pacific Marine Fisheries Commission, Seattle.

Attending as observers were Loyd A. Royal of New Westminster, B. C and Robert J. Schoettler, Seattle, both representing International Pacific Salmon Fisheries Commission.

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SUMMARY OF PROCEEDINGS

SECOND CONFERENCE

ON

CO-ORDINATION OF FISHERIES

REGULATIONS

between

CANADA

and the

UNITED STATES OF AMERICA

Vancouver, B.C. April 21 - 24, 1959.

Summary of Proceedings, Second Conference on Co-ordination of Fisheries Regulations between Canada and the United States of America, Vancouver, B. C., April 21-24, 1959.

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The second conference on the Co-ordination of Fisheries Regulations was held in Vancouver, B.C., from April 21 to 24 to give further consideration to the major agreements reached at the first conference held in Seattle, Washington on February 27 and 28, 1957, and to consider other matters related to the fisheries of the eastern Pacific Ocean of mutual concern to Canada and the United States of America.

Mr. W.C. Herrington, Special Assistant to the Under-Secretary of State, Washington, D.C., and Mr. G.R. Clark, Deputy Minister of Fisheries, Ottawa, headed the United States and Canadian Delegations respectively. A list of the official representatives, advisors, observers and others attending the conference is appended.

General Business

An agenda for the meeting was adopted and a copy is appended.

It was agreed that notes of each separate session would be prepared by the secretariat and that from this material a summary of the proceedings would be prepared and would form the official record of the conference.

Representatives of the press were excluded from the conference and it was agreed that a small press committee would be appointed to prepare a mutually acceptable statement for release to the press at the conclusion of the conference.

Ad hoc committees were appointed to review pertinent data and prepare a report on each of the following agenda items:

1. Coho salmon - Juan de Fuca Strait
2. Offshore salmon net fishing lines
3. Troll fishery regulations
4. Trawl fishery regulations

Coho Salmon - Juan de Fuca Strait

At the first conference on Co-ordination of Fisheries Regulations held in Seattle in 1957 a sub-committee was appointed to consider the location of the line delimiting offshore waters at the entrance to the Strait of Juan de Fuca and presented the following report:

"It is recommended that the Bonilla-Tatoosh line

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be provisionally adopted, provided that scientific investigations and statistical studies be undertaken to develop further knowledge as to the following:

(1) Determination of the composition of the Swiftsure stock of silver or coho salmon compared with that of stocks occurring inside the Bonilla-Tatoosh line east to the Bail Rock - Owen Point line or farther east as might appear necessary and desirable during various summer months.

(2) Evidence of maturity of silver or coho salmon in the study area.

(3) Determination of the timing and extent of eastward migration of feeding silver or coho salmon in the Strait of Juan de Fuca.

"Further it is recommended that the necessary research programme be designed to cover a two-year period and that the results of the research be reviewed at the end of that time by the interested agencies in order that the location of the provisionally adopted line may be reconsidered in the light of new knowledge.

"It is recommended that the research undertaken be co-ordinated with that of other agencies, particularly with reference to tagging or marking programmes, whenever practicable".

The conference was advised that a committee, consisting of Mr. Moore and Mr. Pautzke of the Washington State Department of Fisheries and Mr. Whitmore of the Department of Fisheries, Canada, and Dr. Needler of the Fisheries Research Board of Canada, had been formed following the Seattle conference to co-ordinate the coho (silver) salmon research. A report entitled "Joint Report on the 1957-58 Coho (Silver) Salmon Study in the Strait of Juan de Fuca by Canada and the United States" which had been prepared by this committee was presented to the Conference and accepted as a Conference Document. The conclusions contained in this report are as follows:

" (1) On the basis of tagging experiments, the racial composition of coho salmon in each of the three zones of the study area was the same.

(2) Virtually all coho salmon vulnerable to fishing in the area of study were fish in their third and last year of life. Throughout the area of study there was a gradual increase in the level of maturity of these fish as the season proceeded.

(3) During August, throughout the study area, about twice as many coho were feeding as in September. Evidence from tagging suggests that there was no significant difference in the proportion of feeding fish in each of the zones during comparable periods".

After some discussion if was agreed that this matter should be referred to an ad hoc committee with the following terms of reference:

(1) To review the factors influencing the conservation of coho stocks which pass through Juan de Fuca Strait and to review the needs for special measures to conserve these stocks.

(2) To consider, based on the scientific data, whether or not there is some other line than the existing one which would better assist in the management of the coho salmon stocks for conservation purposes.

The ad hoc committee held several meetings and submitted the following report referring to the terms of reference listed above:

Report of Ad Hoc Committee on Coho Salmon
Juan de Fuca Zones

"With reference to the first item a complete review of all these factors would involve a task of such magnitude that it would be impossible to complete the study in the alloted time even if data were available. The Committee has restricted its study to the immediate factors affecting the stocks which pass through or are destined to pass through the Strait of Juan de Fuca to the inner waters of Puget Sound and the Strait of Georgia. The escapement of coho to the streams and the catch in the area under consideration have been studied.

"The Committee also reviewed the results of the co-ordinated research in 1957 and 1958 on coho (silver)

salmon in the Strait of Juan de Fuca, recommended by the Conference on Co-ordination of Fisheries Regulations between Canada and the United States, February, 1957. It also reviewed other available information bearing on the needs for special measures to conserve these coho stocks.

"With reference to the second item of the terms of reference, the Committee was unable to reach agreement".

In commenting on this report the United States Delegation made the following statement:

"1. The Strait of Juan de Fuca is the only known migration passage for coho destined to Puget Sound.

2. In 1957 the heavy net fishing catch by Canadians inside the Sonilla-Point - Tatoosh Island line coincided with an early opening of the season, July 22. In 1958 the season opened on August 20 which resulted in a reduced coho catch. The length of the season is directly related to the size of the catch.

3. In 1957 the commercial catch in the inner Sound was 59,000 coho and in 1958 the catch amounted to 104,000 coho. The scarcity of coho in 1957 was recognized by the Washington State Department of Fisheries and as a result the season was closed in all waters on September 27. In spite of the closure the escapement to the central and southern parts of Puget Sound was poor.

4. The above facts indicate that both the commercial catch and escapement of coho to middle and southern Puget Sound were adversely affected by the larger catch in the Strait of Juan de Fuca in 1957.

5. In the United States view these facts indicate that the United States is faced with a serious conservation problem in the coho stocks in Puget Sound.

"On the basis of the joint research, we are agreed that the scientific findings show that the area from the Sonilla-Tatoosh line to Sooke Inlet line is a feeding and growing area for coho comparable to the outside Swiftsure Bank area. Consequently the present line is not serving the purpose for which intended that is, to protect stocks of mixed and growing coho. Joint research has not been carried out on coho

east of Sooke Inlet, and we therefore to not have information from such studies showing the characteristics of the stocks in this area.

"On the basis of the conclusions from the joint research west of Sooke Inlet, it is clear that a line at the eastern border of this research area would provide considerably more protection to stocks of mixed and growing coho than the present line. At the 1957 Conference, in the absence of data bearing on the best location of the line, and in spite of a strong United States preference for the Owen Point-Sooke line, the United States Delegation accepted Canada's request regarding location of a provisional line with the further provision for joint scientific studies to provide a basis for later consideration of relocation of the line.

"In the light of this previous procedure, we now propose that on the basis of present scientific knowledge, a new provisional line should be established near the eastern boundary of the joint research area, with provision for a further study in the area to the east, in order that the line may be relocated as a conservation measure based on scientific findings".

The Canadian Delegation pointed out that all the data contained in the first part of the United States statement had been considered by the Ad Hoc Committee but no agreement was reached on proposed action. Further, the Sonilla-Tatoosh line was provisionally accepted at the Seattle Conference as a line delimiting offshore waters across the entrance to Juan de Fuca Strait beyond which no salmon net fishing would be permitted. It was not designated solely for the purpose of protecting coho salmon stocks. Evidence from data on coho escapement to Canadian spawning streams in the Gulf of Georgia area does not indicate that the Canadian commercial fishery in Juan de Fuca Strait has adversely affected the runs, and the Canadian catch which averaged approximately 56 percent of the total catch of the stocks passing through Juan de Fuca Strait in 1957 and 1958 is believed to be no greater proportionately than the contribution of Canadian streams to these stocks. On the basis of the scientific data available to date Canada was unable to agree to any eastward relocation of the provisionally adopted Sonilla-Tatoosh line. The Conference was advised that Canada recognized at all times the need for scientific management of fishery resources in order to conserve the stocks and, as an example, had taken action to reduce the maximum depth of gill nets in the Strait of Juan de Fuca for the 1958 season. This would give some added protection to the coho salmon stocks under consideration.

The United States Delegation then presented the following resolution:

> "This Conference recommends to the Governments of Canada and the United States that they give consideration to advising the International Pacific Salmon Fisheries Commission that it should take into consideration the provision of adequate escapement of coho through the Strait of Juan de Fuca in formulating its regulations".

After careful examination of this resolution the Canadian Delegation stated that it was unacceptable since it appeared to request action by the International Pacific Salmon Fisheries Commission beyond the authority of the Convention and the Commission.

The United States Delegation stated that because the Conference had failed to make any real progress with regard to relocation of the Bonilla-Tatoosh Line the United States must reserve its position regarding the right to change the line in respect of American fishermen, but that if any such change were proposed the United States would consult with Canada beforehand.

The report of the Ad Hoc Committee on Coho Salmon - Juan de Fuca Strait - was accepted and it was agreed that a local committee on the Pacific Coast would be appointed to continue the study of the coho problem in the light of any additional pertinent scientific evidence which might be obtained in the future.

Review of Offshore Salmon Net Fishing Lines

The discussion on this item was opened by the Canadian Delegation recalling that when consideration was being given to the location of offshore salmon net fishing lines in the eastern Pacific Ocean at the Seattle Conference in 1957, a chart showing the location of the proposed line in Alaska was not available; that Canada had requested a copy of such a chart showing a definitive line; and that this was made available some months later for study. The Canadian Delegation stated that it was apparent that the offshore salmon net fishing line in Alaska was located using a different basis for its location than was used in defining the lines agreed to along the coasts of California, Oregon, Washington and British Columbia.

The Canadian Delegation requested that consideration be given to adjusting the line in Alaska in order to have it conform more closely to the offshore salmon net fishing lines agreed to for all other areas. It was stated that particular attention should be given to relocating the line in southern Alaska where net

fisheries were known to affect seriously in some years the management of certain salmon stocks originating in streams of northern British Columbia.

The United States Delegation stated that there were administrative problems involved in this connection in the Alaska area. Most of the fisheries were operating close to land in localities where fishing had been carried out in a traditional manner for the past 50 years or more. Some of the stocks could not be harvested efficiently by any other means. It was the understanding of the United States that the objective of the offshore fishing lines was to prevent the development of major new offshore net fisheries or the expansion of existing fisheries. In the United States view this objective had been achieved. New net fisheries have not developed nor were the existing net fisheries in the waters of Alaska expanding.

The United States Delegation stated that if there were conservation problems caused by location of the line it would be happy to consider them. In this connection, the United States Delegation pointed out that its records indicated that the Canadian fishery in northern British Columbia near the International Boundary intercepted considerable quantities of salmon bound for Alaskan streams.

After an exchange of observations on the management problems associated with the salmon fisheries of southeast Alaska and northern British Columbia it was decided that the matter should be referred to an Ad Hoc Committee for further review. This committee subsequently submitted the following report:

> Report of Ad Hoc Committee on the Review of Offshore Salmon Net Fishing Lines
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> "The Ad Hoc Committee on the Review of Offshore Salmon Net Fishing Lines held several meetings during the current week. The Committee discussed the location of the salmon net fishing lines which are set out in the Summary Proceedings of the Conference on Co-ordination of Fisheries Regulations held in Seattle, Washington in February 1957. The Committee reached no agreement with respect to adjustment of the offshore salmon net fishing limits of Alaska and of British Columbia".

The Canadian Delegation made the following statement in commenting on this report:

> "With reference to the discussions which have taken place at this Conference, at both the general sessions

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and at the meetings of the Ad Hoc Committee on Review of Offshore Salmon Net Fishing Lines, it seems to the Canadian representatives that, with respect to the offshore salmon net fishing lines, there is an obvious difference between the Canadian and United States lines in the northern areas. From the Canadian point of view this difference arises from the lack of a uniform basis for determining the location of the offshore salmon net fishing limits in Alaska as compared with that in Canada.

"It is stated in the Summary Proceedings of the Conference on Co-ordination of Fisheries Regulations held in Seattle, Washington in February, 1957, under Major Agreements Reached (4) and (5) -

'(4) The line described in the Alaska Fishery Regulations was appropriate.

In this connection it was understood that the closing lines connecting headlands in Alaska, which were discussed and which serve as a baseline in some areas for the measurement of the seaward limits of the 'waters of Alaska' as this expression is used in the Alaska Fishery Regulations, are not definitive. On the request of the Canadian Delegation for a chart showing the definitive line the United States Delegation agreed to submit such a chart as soon as possible.

'(5) All the lines delimiting offshore waters agreed to during the Conference would be made effective for the coming season and consideration would be given to adjusting the lines whenever example..ce indicated that an adjustment was required.'

"It was Canada's understanding at the Seattle Conference that when the chart showing the definitive line for Alaska had been received and reviewed we would have an opportunity, as outlined in Major Agreement No. 5 of the Seattle Conference, to meet again and propose necessary adjustments of the lines as was the procedure followed at the Seattle Conference in considering the location of the lines in all other areas.

"The chart requested by Canada at the Seattle Conference (1957) was received from the United States some eight months after the Conference. The chart was examined and Canada

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is still of the view that the Alaska line is not definitive. Because of this Canada made a formal request to the United States for the opportunity to review and consider adjustments in the Alaska line in order to achieve uniformity in the basis for locating offshore salmon net fishing limits in the eastern Pacific Ocean insofar as it could be done within practical and geographical limitations.

"Canada regrets that it has not been possible, at the present Conference, to reach agreement on matters relating to the offshore salmon net fishing limits in Alaska.

"Canada understands and appreciates the practical considerations and difficulties involved in attempting to adjust the Alaskan offshore salmon net fishing limits, but we consider that there should be uniformity, within practical limitations, of the basis on which the lines are established in all areas. Such basis of uniformity was established by Canada and by the States of Washington, Oregon and California.

"Because of the obvious difference in the bases used in establishing the offshore salmon net fishing limits in Alaska and in British Columbia, Canada has no alternative but to reserve the right to adjust the offshore salmon net fishing limits for British Columbia to conform with the basis used by the United States for Alaska".

The United States Delegation made the following statement with reference to this matter:

"The report of the Seattle Conference states with respect to offshore salmon net fishing lines that ' ... development of major offshore salmon net fisheries posed a serious management problem and that regulation of such fishing in the eastern Pacific Ocean was essential to the conservation of salmon stocks of North American origin'. No other objective for offshore salmon net fishing lines is given in the report.

"The report of the Seattle Conference also includes the following statement: 'The US Delegation stated that: The Secretary of the Interior now prohibits the taking of salmon by US Nationals in the Pacific Ocean outside the waters of Alaska north of Dixon Entrance and east of 175 degrees west longitude, except by means of trolling'.

"After consideration of various proposals by the United States and Canada, the following agreement was reached regarding the Alaska line:

> 'The line described in the Alaska Fishery Regulations was appropriate.
>
> 'In this connection, it was understood that the closing lines connecting headlands in Alaska which were discussed and which serve as a baseline in some areas for the measurement of the seaward limits of the 'waters of Alaska' as this expression is used in Alaska Fishery Regulations, are not definitive.
>
> 'All the lines delimiting offshore waters agreed to during the Conference would be made effective for the coming season and consideration would be given to adjusting the lines wherever experience indicated that an adjustment was required'.

"From these statements it seems clear to us that the method or basis for constructing the salmon net fishing lines in Alaska was understood and was 'appropriate'. If this was not the case, there has been a most unfortunate misunderstanding.

"The current Conference has given consideration to adjusting the Alaska lines following the proposal of Canada that adjustment is required. It appears that conservation problems are involved where the fisheries of both countries operate on the same stocks of fish. The United States Delegation has proposed that the conservation problems created by the taking by the United States of quantities of salmon enroute to Canadian streams and by the taking by Canada of quantities of salmon enroute to Alaskan streams be studied by an Ad Hoc Committee to be set up by this Conference, and that all of the evidence on these problems in the possession of the Parties be supplied to this Committee, in order that a determination may be made as to whether an adjustment is required to resolve the conservation problem.

"If Canada considers that the solution of its conservation problems is so urgent that the delay thus entailed would be very damaging, the United States is prepared immediately to undertake the study of all pertinent data on the problem in order to resolve the problems of the Conference".

The report of the Ad Hoc Committee on Review of Offshore Salmon Net Fishing Lines was accepted.

The following joint resolution was adopted by the Conference:

> "This Conference, recognizing the desirability of reaching an early solution of problems of mutual concern related to the conservation and management of salmon stocks in southeast Alaska and northern British Columbia which became apparent during the Second Conference on Coordination of Fisheries Regulations, recommends to the Governments of the United States and Canada, that a committee be established as soon as possible to consider these problems and subsequently recommend appropriate action to insure continued effective conservation of those stocks".

It was agreed that such a committee would be established at an early date with instructions to submit a report as quickly as possible.

Troll Fishery Regulations

Under this item the United States Delegation stated it would like to have the current troll fishery regulations reviewed since there appeared to be certain exceptions in Canadian waters to the otherwise uniform regulations, and to discuss once again the principle of setting aside nursery areas for coho (silver) and chinook salmon for specific time intervals.

The Canadian Delegation requested information on the interpretation of the agreed opening date of April 15 for spring salmon fishing in California, Oregon and Washington. It was noted that this date was a fishing date in Canada while it was understood that this was a landing date in the United States.

It was agreed that these matters should be referred to an ad hoc committee and a report submitted to the Conference.

The following report was presented by the Ad Hoc Committee on Troll Fishery Regulations and accepted as submitted by the Conference:

Report of Ad Hoc Committee on Troll Fishery Regulations

> "1. The Committee considers it desirable to record the troll regulations now in effect throughout the outside waters of the Pacific Coast as an illustration of the uniformity so far achieved in the management of this fishery. The general season and size limits are as follows:

Chinook (Spring)

1) Commercial

Open season April 15 - October 31 in all jurisdictions except California (May 1 - September 30).

Minimum size 26" overall except in Alaska where measurement is fork length.

In British Columbia inside the offshore fishing line a minimum size of 3 pounds in the round or 2½ pounds dressed, prevails. Also in British Columbia inside the offshore fishing line the open season for Springs (chinooks) is Feb. 1 to Nov. 30.

2) Sport fishery (tidal waters)

(a) British Columbia

i. With two exceptions, where smaller bag limits are enforced, the province-wide daily bag limit for salmon in tidal waters is four salmon or eight grilse (salmon under three pounds in the round) or not more than eight salmon and grilse in the aggregate.

ii. No person can have in possession more than three days bag limit at one time.

iii. The province-wide minimum length of any salmon which may be taken by sports fishing in tidal waters is eight inches.

(b) Alaska

Sport limit (S.E. Alaska) 50 pounds and 1 fish, or 3 fish. Season April 15 - October 31 in outside waters; no closed season inside except locally.

(c) Washington

No closed season. Minimum size 20 inches in Strait of Juan de Fuca and Pacific Ocean. Bag limit 3 fish, with possession of 6. Inside waters same except minimum size 16".

(d) Oregon

For landings from outside (non-territorial) waters daily bag limit of 2 fish with 4 in possession. Minimum size south of Tillamook Head 20 inches; north of Tillamook Head 22 inches.

(e) California

Season: Approximately February 15 to November 15 to nearest weekend. Minimum size 22 inches with bag limit 5 per day south of San Francisco Bay. No bag limit to north of San Francisco.

Silvers (coho)

1) Commercial

Open season British Columbia June 16 - November 30 inclusive. Washington and Oregon June 15 - October 31, California May 1 - September 30, Alaska - July 1 - September 20.

Minimum size California 26", Oregon none, Washington 22". British Columbia 3 pounds in round or 2½ pounds dressed. Alaska none.

2) Sport Fishery (Tidal Waters)

In British Columbia sports fishery regulations applicable to Springs (Chinooks) also apply to Silvers (Coho). State regulations substantially correspond to Chinook regulations, except for Alaska where there are no sport regulations on Silvers (Coho).

"12. The Committee recognizes that contrasting opinions exist as to the biological soundness of minimum size limits for the troll salmon fishery. Experiments conducted in Oregon and Washington during the spring of 1960, together with continuing sampling records of length-frequency and age composition of commercial catches may ultimately permit evaluation of hooking mortality or of more appropriate size limits to protect immature fish. In the meantime present general size limits appear to be supported by economic considerations and to be acceptable to the fisherman. The Committee concludes that under present circumstances the minimum size limits prevailing in outside waters should be continued in effect pending the development of data which demonstrate that these limits or other limits defeat the conservation objectives. By the same token there is no urgency now to enact absolute uniformity in the coho size limits where disparity exists.

The Committee further recognizes that the sport salmon fishery constitutes a growing management problem and that the regulations for sport salmon fishing in tidal waters depart widely from any common pattern and reflect localized conditions in the various jurisdictions. In the present state of knowledge of the pressures actually exerted by the sport fishery, the most practical course is for each jurisdiction to apply such added restraints as seem appropriate in the light of local conditions.

"13. The Committee had access to no information which would indicate that it is possible at this time to define salmon nursery areas with sufficient precision to permit the setting up of such areas as a practical management measure. Such studies as have been conducted lead to the apparent conclusion that where concentrations of immature fish occur such concentrations

are highly variable in time, place and density. The Committee would reiterate the 1957 endorsement of the principle of setting aside such sanctuary areas but it would be premature to establish any such areas on the basis of present knowledge of the ocean distribution of the age groups which it is desired to protect.

"14. The Committee considers the potential contributions arising from the fact that in Canada the law is sufficiently explicit to prevent any pre-season fishing by the troll fleet. In the States landing laws are the measures which must be relied upon to make opening dates effective, but there has been some evasion by vessels which are free to leave port prior to the opening date. No problem in this connection exists within territorial waters. California, Washington and Oregon in 1958 and 1959 have collated the co-operation of the fishermen in respecting the opening date as a fishing date, and there has been substantial enforcement. As a result the seaward catch has been reduced to negligible proportions at this time. However, the Committee and the administrators concerned consider that the co-operative response may not continue indefinitely and that legal loopholes should be eliminated. The Committee strongly recommends that the States seek corrective legislation, either State or Federal, which will assure that no troll salmon fishing can take place outside of territorial waters in advance of the legal opening of the season".

Troll Fishery Regulations

The Canadian Delegation requested information regarding the existing trawl regulations for petrale sole in the states of Oregon and Washington since it was believed that in some areas the regulations agreed to at the 1957 Seattle Conference had been amended recently. The regulations agreed to at the Seattle Conference had been brought into effect immediately in British Columbia and were still in effect.

The United States Delegation advised that the regulation limiting the incidental catch of petrale sole to 2000 pounds not to exceed two trips per month had been found too restrictive and the following action had been taken -

In Washington State the regulation was amended to permit trawl fishermen to land incidental catches of petrale sole of 5000 pounds or not more than 2 percent of the total catch of any one trip. When this amendment was made effective the fishermen agreed not to operate in areas known to be spawning areas for petrale sole.

It appeared that the amended regulation served a useful conservation purpose since the catch of petrale sole for the months of January to April inclusive amounted to 2,903,700 pounds in 1957 and 245,334 pounds in 1958. In 1959 the catch from January to March inclusive amounted to approximately 80,000 pounds.

In Oregon it had also been found that this particular regulation proved too restrictive and in order to obtain the opinions of other interested agencies before enacting the regulation the following letter was forwarded to the Washington State Department of Fisheries and the Department of Fisheries in Vancouver, B.C., by the Oregon State Fish Commission -

> "As a result of an agreement made at the Conference on Co-ordination of Fisheries Regulations between Canada and the United States held on February 27 - 28, 1957, in Seattle, Washington, the State of Oregon has put into effect further stringent regulations surrounding the taking of petrale sole during the spawning season. The specific purpose of the regulation is to protect the stock of winter spawning petrale sole off the Esteban Deep. The Oregon regulation provides for a maximum of 3,000 pounds of petrale sole during the period from December 20 to April 15 of the following year with a limit of two trips a month.
>
> It is the opinion of the Oregon Fish Commission that this regulation is imposing undue hardship on the Oregon otter trawl fishermen. Because of the distance from the Esteban fishing grounds and because of adverse weather conditions during the winter season, there appears to be no need for a two trip limit by Oregon boats to protect the Esteban petrale sole spawning stocks. If our Oregon boats are lucky enough to make two trips in a month and catch any petrale sole at all on each trip, on subsequent trips they must discard all of this species. There is also some feeling that the 3,000 pound limit is too stringent for Oregon boats and that a 5,000 pound limit would act just as effectively to keep our vessels from fishing the Esteban Deep.

> The Oregon Fish Commission would like to take action to modify the regulations with regard to Oregon petrale sole fishermen, but we also want to be sure that such action is agreeable with the Washington and Canadian fisheries agents.
>
> I would appreciate very much receiving your comments regarding this situation, and also your suggestions about procedure to follow if you think a change in the regulation is acceptable".

Since no objections were received Oregon extended the two month season one month and added an eleven inch size limit. Further, a scientific investigation to obtain more essential information regarding the trawl fisheries has been undertaken in co-operation with the U.S. Fish and Wildlife Service.

It was agreed that these and other matters related to the trawl fishery of the eastern Pacific Ocean should be referred to an ad hoc committee for review.

The Ad Hoc Committee on Trawl Fishery Regulations presented the following report to the Conference:

Report of Ad Hoc Committee on Trawl Fishery Regulations

"At the 1957 Conference on Co-ordination of Fisheries Regulations, agreement was reached on -

1) A uniform closed season on petrale sole from December 20 to April 15 in each year.

2) A maximum incidental catch during this closed season of 3,000 pounds of petrale sole per trip not to exceed two trips per month.

"This agreement involved Oregon, Washington and the British Columbia area of Canada. California was to take such action as necessary to prevent the use of its ports for the purpose of evading regulations in northern areas.

"Regulations complying with the agreement were implemented by Oregon, Washington and Canada in 1957.

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In the winter of 1958-59 modifications were effected by Oregon and Washington and are now in force as follows:

In Oregon the two-trip limit of incidental landings during the closed period was abolished. However, the 3,000 pound limit per trip was retained.

In Washington the trip limit on incidental landings of pacific cole was modified to allow 2,000 pounds or 5 percent of the total landing per trip during the December 20 to April 10 closed period. This was made on the understanding with the fishermen that they would avoid areas of spawning concentrations of pacific cole. The two-trip limit on incidental landings was retained.

"As these modifications were made only recently, the degree to which they may affect the intent of the original agreements cannot be completely assessed at the present time.

"Regarding trawl mesh regulations, there is at present limited coast-wide uniformity in minimum mesh size because of local problems relating to the capture of dogfish and Pacific 'ocean perch'. The value of a 4½ inch minimum mesh size is recognized as an effective means of minimizing the capture of undersized fish and should be adopted wherever and whenever possible.

"Regarding the minimum size of blackcod, uniformity of regulations now exists in the principal areas of concern namely, Oregon, Washington and British Columbia. Similar uniformity now exists with regard to seasonal restrictions on the blackcod fishery, as a result of recent action in Oregon and Washington. There are now no seasonal closures.

"This Committee recommends establishment of a continuing group made up of administrative and technical representatives of Oregon, Washington and Canada to perform the following functions:-

1. To review proposed changes in trawl regulations affecting fisheries of common interest before they are implemented.

2. To review the effectiveness of existing regulations.

3. To exchange information on the status of bottom fish stocks of mutual concern and to co-ordinate wherever possible programmes of research.

4. To recommend the continuance and further development of research programmes in order to provide a basis for future management of the trawl fishery.

"This Committee also recommends that the exchange of catch statistics as currently co-ordinated by the Pacific Marine Fisheries Commission be expanded to include monthly figures by area. For areas of overlapping interest, co-ordination of statistics of fishing effort should be attempted where possible".

During the discussion on this report it was agreed that a decision would be made by each agency concerned regarding the appointment of representatives to serve on the "continuing group" recommended in the report and that the names of the representatives would be exchanged as soon as possible. Meetings of this group would be held when convenient, perhaps at the time of the annual meeting of the Pacific Marine Fisheries Commission, and industry representatives would be called upon from time to time in an advisory capacity if required.

The report of the Ad Hoc Committee on Trawl Fishery Regulations was accepted by the Conference.

Fraser River Sockeye - Johnstone Strait

The United States Delegation stated that it had requested an exchange of views regarding the run of Fraser River sockeye through Johnstone Strait in 1959 as an agenda item for this Conference in order to clarify its thoughts regarding the following problems which existed in its opinion -

1. The interest of fishermen of the United States in a share of the run.

2. The management problem in the Fraser River related to the provision of adequate escapements to all tributaries as affected by the large catches in Johnstone Strait.

The Canadian Delegation stated that it had been made clear in the exchange of letters between the United States State Department and the Canadian Department of External Affairs terminating the negotiations that Canada maintained the view that under paragraph 1 of the sockeye articles of the Fraser River Convention between Canada and the United States, as duly built on the co-ordination of fisheries regulations was not the proper place to discuss any matters related to sockeye salmon of the Fraser River. Canada had agreed, however, to an exchange of views on this subject at the Second Conference on Co-ordination of Fisheries Regulations on the understanding that the views expressed would be considered informal and unofficial.

It was agreed that the Director of the International Pacific Salmon Fisheries Commission should be asked to provide any information available pertinent to the problem under consideration.

In order to obtain as much factual information as was available concerning the nature of the sockeye run in question, the United States Delegation questioned the Director with regard to an estimate of the number of sockeye from the Fraser River that passed through the River by way of Johnstone Strait in 1958; the size of the total run to the Fraser River in 1958; the number of sockeye which survived the Johnstone Straits fishery and entered the Convention area; the dependence of certain Fraser River sockeye stocks on escapement of sockeye through Johnstone Straits; and the management problems created by the Johnstone Straits fishery in 1958.

The Director of the International Pacific Salmon Fisheries Commission replied to all these questions stating that in recent years the percentage of the total Fraser River sockeye run caught in Johnstone Straits had been increasing and that in 1958 the estimated figure was approximately 22 percent; the total run of sockeye amounted to 10 million fish in 1958; it had not been possible to ascertain the number of salmon reaching the Fraser River from Johnstone Straits; it appeared the earlier runs to the Fraser River passed through Johnstone Straits in greater volume by percent; very serious management problems existed in 1958 since the summer runs appear to be more vulnerable to fishing gear and special closures were required to provide adequate escapement of these summer runs. Conversely such closures were not required for the later Adams River run which approached through the Straits of Juan de Fuca and the escapement was successful.

Mr. Merrington pointed out that in the United States view, occurrences such as that which took place in 1958, worked an inequity upon United States fishermen by depriving them of a share of the harvest although they had shared equally with Canada in bearing the cost of developing and maintaining the harvest. The inequity would, of course, become greater should such occurrences become more frequent. This inequity would be more serious when the entire escapement for the Fraser River was taken from that part of the run passing through the Straits of Juan de Fuca, rather than being taken proportionately from both parts of the run. This had been the situation in the 1958 season, a situation which was the cause of some concern on the part of the United States.

The Canadian Delegation took note of the United States views with regard to these problems and stated that there were no Canadian views to be expressed during this informal and unofficial discussion.

General Remarks

The United States Delegation stated - "We are gratified that the Conference has been able to reach agreement on two of the important items before it, but at the same time we are somewhat disappointed that greater progress was not made.

"We are also much disappointed with regard to the response of the Canadian Delegation in respect to the exchange of views on the run of Fraser River sockeye through Johnstone Straits in 1958. In an exchange of communications between the Canadian Department of External Affairs and the United States Department of State, it was agreed that there would be such an exchange. The information placed in the record of the Conference regarding the very large size of this run in 1958 and the effect on the conservation management programme of the International Pacific Salmon Fisheries Commission makes this problem a matter of very considerable importance to the United States fishermen and the United States Government. In view of this importance the contribution of the Canadian Delegation to the agreed exchange of views was rather short of what we felt we could expect in the light of the communications between governments. We look forward, however, to the time when a more adequate discussion of this important matter can take place".

The Canadian Delegation stated that while a good deal of progress was achieved on certain agenda items progress on other items had fallen short of the Canadian expectation. However, the Conference had proved of value to the Canadian Delegation and it was to be expected that solutions to the new problems of mutual concern which became apparent during the Conference would soon be found.

With regard to the problem of Fraser River sockeye - Johnstone Straits, the Canadian Delegation expressed regret that the Canadian position was a source of disappointment to the United States Delegation but maintained that in the Convention with this was not the proper forum for discussion of this problem and only informal and unofficial views could be exchanged.

APPENDIX 1

SECOND CONFERENCE

ON

CO-ORDINATION OF FISHERIES

REGULATIONS

MANAGEMENT A.C. - APRIL 21 - 26, 1947

1. CALL TO ORDER.
2. OPENING REMARKS.
3. APPOINTMENT OF CHAIRMAN.
4. SECRETARIAT.
5. INTRODUCTIONS:
   (a) Official representatives.
   (b) Advisors.
   (c) Observers.
6. PRESS RELATIONS.
7. APPOINTMENT OF AD HOC COMMITTEES.
8. COHO SALMON - JUAN DE FUCA STRAIT:
   (a) Report of investigations.
   (b) Consideration, in the light of the scientific findings, of the location of the line delimiting offshore waters across Juan de Fuca Strait.
9. REVIEW OF OFFSHORE SALMON NET FISHING LINES.
10. TROLL FISHERY REGULATIONS.
11. OTHER BUSINESS:
    (a) Trawl Fishery Regulations.
    (b) Fraser River Sockeye - Johnstone Strait.
12. ADJOURNMENT.

For Release

Vancouver, B.C.
25 April, 1957.

Canadian and United States representatives to the Second Conference on Co-ordination of Fisheries Regulations ended their meetings in Vancouver yesterday having reviewed in detail regulations with respect to the sockeye salmon and herring fisheries in the Pacific as recommended and agreed upon at the original Conference in Seattle in 1947.

The meetings opened with discussion concerning the results of the co-ordinated research program on sockeye salmon undertaken by Canada and the United States following the first Conference at Seattle and continued to their present day. The special problems in the area adjacent to the Pacific Coast Indian Reserve line at the entrance to the Straits of Juan de Fuca. Also under discussion were offshore and on net fishing lines, lines seaward of which salmon may not fish. It was considered review of current troll and trap fishery regulations and the procedures adopted at the original Conference for co-ordination of these regulations for each of these fisheries; and the large runs of sockeye in 1956 through Johnstone Strait to the Fraser River.

A special committee was set up within the Conference to consider the results of the co-ordinated research program carried out by the Fisheries Research Board of Canada and the Washington State Department of Fisheries. During the course of this investigation nearly 7,000 coho were tagged in the Straits of Juan de Fuca and in addition several thousand fish were examined in order to develop knowledge on the composition of the fishery which of coho salmon originate with that of coho stocks spawning inside the Boundary-Treaty line; the maturity of coho salmon in the ocean; areas and the timing and extent of eastward migration of coho salmon in the Straits of Juan de Fuca. After considering the special committee's report, the Conference reached an agreement on the location of the Boundary-Treaty line. Arrangements were made to establish a committee composed of representatives of Canada and the United States to continue consideration of this problem.

With particular reference to Alaska and Northern British Columbia, the committee considered the location of the current salmon net fishing lines, and the desirability of extension of the lines. No agreement was reached on extension of the lines but in order to deal further with the problem in the area, the Conference adopted the following resolution - "This Conference, recognizing the desirability of reaching an early solution of problems of mutual concern relative to the conservation and management of salmon

stocks in southeast Alaska and northern British Columbia, which became apparent during the Second Conference on Co-ordination of Fisheries Regulations, recommends to the Governments of the United States and Canada that a committee be established as soon as possible to consider these problems and subsequently recommend appropriate action to ensure continued effective conservation of these stocks".

With regard to troll and trap fisheries, the Conference considered that the regulations had been essentially effective but it was felt an improved procedure for co-ordination is desirable.

The Conference took note of the United States expression of serious concern about the reduction in the quantities of Fraser River sockeye entering Convention waters in 1956; the possible effects of similar reductions on the management programs of the International Pacific Salmon Fisheries Commission; and the possible contribution of such large reductions in connection with the provisions of the Convention relating to division of the catch between United States and Canadian fishermen.

The meetings, which were held in the Board Room of the Custom House, were attended by officials from Washington, D.C., Ottawa, members of the State Legislatures, and officials of the Pacific Coast States as well as commissioners of the Pacific Marine Fisheries Commission and advisors from industry.

In attendance were United States Delegates - W.C. Herrington, Special Assistant to the Under Secretary of State; Stuart Blow, Department of State; D.L. McKernan and W.W. Terry of the United States Fish and Wildlife Service; M.E. Deane, Washington Department of Fisheries; and A.T. Day, Oregon Fish Commission.

United States Advisors were Representative J.E. Longworth, Alaska State Legislature; J.T. Charnon and C.T. Murry, Jr., of the United States Fish and Wildlife Service, Alaska; R.R. Parker, Alaska Department of Fish and Game; W.C. Jones, Pacific Marine Fisheries Commission, Portland; R.J. Tesser, American Consul, Vancouver; S.J. Matthiesen, United States Fish and Wildlife Service, Seattle; A.W. Schaefer, Oregon Fish Commission, Oregon; R.T. Bowsley, C.F. Pautzke, H.M. Jenson, and E.D. Jewett, all of the Washington Department of Fisheries; R. Van Cleve, College of Fisheries and W.E. Royce, Fisheries Research Institute, University of Washington, Seattle;

...Canadian Salmon Industry, Inc., Seattle;
...Smith, Fishermen's Marketing Association and Northwest
...Fish Distributors, Seattle; M.B. Foulis, Nelbut Packing
...., Seattle; Wm. O'Neill, Association of Pacific
...Fisheries, Seattle; E.W. Johnston, Fishermen's Co-operative
...Federation, Seattle; M.C. Hindmarch, Puget Sound Vessel
...Owners Association, Seattle; C. Johnson, Alaska Fishermen's
...Union, Seattle; W. Colvin, Puget Sound Gillnetters Associa-
...tion, Bellingham; and J.N. Kabalin, Fishermen's Packing
Corp., Anacortes, Washington.

...also attending the Conference was G.M. Raynor,
...Salmon Canners Limited, Vancouver.

The Canadian Delegation were - G.R. Clark, Deputy
Minister of Fisheries, Ottawa; Dr. H. Sprules, Director
of Fisheries, Ottawa; and from the Department of Fisheries,
Vancouver, B.C., Mr. A.J. Whitmore and C.H. Lovelace.

Canadian advisers were - Dr. A.W.H. Needler,
Dr. J.C. Stevenson, Dr. D.J. Miller, Dr. K. Ketchen and
F.C. Whitmore of the Fisheries Research Board of Canada,
Nanaimo, B.C.; S.L. Young, R.E. McLaren, Captain R.S. Guy
and ... Crosman of the Department of Fisheries, Vancouver;
J. Cameron, International North Pacific Fisheries Commis-
sion; C. Clark and A.M. Sinclair, Fishing Vessel Owner's
Assoc. of B.C.; B. Nelson, Hon. J. Sinclair, S. Rumsey
and D.F. Miller, Fisheries Association of B.C.; L. McKinney,
Pacific Trollers' Association; G. Williams, Native Brother-
hood of B.C.; D.E. Baker, B.C. Fishermen's Independent Co-
op. Association; R.H. Payne, H. Stevens, P. Jensen and
D. Nevin, United Fish Trade and Allied Workers' Union;
P.D. Wallace, Prince Rupert Fishermen's Co-op. Association;
F. Rolfe, B.C. Gillnetters Association; and J. Vukic, B.C.
Packers Limited.

Attending as observers were L. Royal and A. Cooper
representing the International Pacific Salmon Fisheries
Commission, New Westminster, B.C.

DX DE

OPERATION ORDER
C17CGD No. 12-58

Commander, 17th Coast Guard District
Juneau, Alaska

9 May 1958

Task Organization

a. USCG Air Detachment, Kodiak	CAPT C. TIGHE (1413) USCG
b. USCG Air Detachment, Annette	CDR T. H. MacWHINNEY (2655) USCG
c. USCGC NORTHWIND	CAPT T. R. MIDTLING (1385) USCG
d. USCGC STORIS	CDR H. L. WOOD (1523) USCG
e. USCGC BITTERSWEET	LCDR B. E. KOLKHORST (3323) USCG
f. USCGC CITRUS	LCDR E. R. THARP (3345) USCG
g. USCGC CLOVER	LCDR J. P. STEWART (3636) USCG
h. USCGC HEMLOCK	LT. W. E. CALDWELL (4097) USCG
i. USCGC SEDGE	LCDR K. L. MOSER (3563) USCG
j. USCGC SORREL	LCDR R. D. FULLER (4295) USCG
k. USCGC SWEETBRIER	LCDR C. L. TURNER (2728) USCG
l. USCGC TURBALL	LT. R. E. ANDERSON (5212) USCG
m. USCGC WHITE HOLLY	CHBOSN L. L. GROVES (26391) USCG

1. General Situation

a. The enforcement of the various international fishing treaties in Alaska is the joint responsibility of the United States Coast Guard and the United States Fish and Wildlife Service. These include the North Pacific Halibut Act and the North Pacific Fisheries Act, 1954 as amended July 1957. Designated patrols for the enforcement of the North Pacific Halibut Act were assigned in District OP. Order No. 5-58 and 8-58. The fishing for or taking of Salmon, except by trolling, by any person or fishing vessel, subject to the jurisdiction of the United States, on the high seas, off the British Columbia Coast and all waters of the North Pacific Ocean and Bering Sea, North of Dixon Entrance and east of 175 degrees West Longitude, exclusive of the waters of Alaska which extend three miles seaward from the coast, is in violation of the North Pacific Fisheries act of 1954 as amended July 1957.

2. Mission

a. To establish patrols in designated waters on the high seas in support of the enforcement of the North Pacific Fisheries Act, 1954 as amended July 1957.

3. Task

a. USCG Air Detachment, Kodiak, to provide two patrols, one on or about 26 June and the other, on or about 10 July 1958, in connection with regularly scheduled logistic flights to Sarichef, of the area offshore, north of the Alaskan Peninsula and Unimak Island, with particular emphasis to the Port Moller Area. Contact Fish and Wildlife Service Agent, Sand Point, through the Fish and Wildlife Service Agent, Kodiak, prior to patrols and coordinate patrols with him, provide such transportation as he may request.

b. USCG Air Detachment, Annette, to provide five patrols, one each on or about 25 June, 10, 25 July and 10, 25 August, 1958, of the area offshore from Cape Addington, Noyes Island, South to Cape St. James, Queen Charlotte Island.

Div. of Resource Mgmt., Wn.

Pac. arch.

OPERATION ORDER
C17CGD No. 1-58

Commander, 17th Coast Guard District
Juneau, Alaska

9 May 1958

Task Organization

a. USCG Air Detachment, Adak
b. USCG Air Detachment, Annette
c. USCGC MCCULLOCH
d. USCGC STEVENS
e. USCGC [illegible]
f. USCGC CITRUS
g. USCGC CHEROKEE
h. USCGC [illegible]
i. USCGC SPAR
j. USCGC SORREL
k. USCGC SAMUEL B. ROBERTS
l. USCGC KIMBALL
m. USCGC WILLOW (WAGL 402)

CAPT C. [illegible] (USCG) [illegible]
CDR W. H. [illegible] (USCG) [illegible]
CAPT L. A. [illegible] (USCG) [illegible]
CDR L. T. [illegible] (USCG) [illegible]
LCDR F.M. [illegible] (USCG) [illegible]
LCDR E. R. [illegible] (USCG) [illegible]
LCDR J. [illegible] (USCG) [illegible]
LT. L. E. [illegible] (USCG) [illegible]
LCDR T. [illegible] (USCG) [illegible]
LCDR J. [illegible] (USCG) [illegible]
LCDR C. [illegible] (USCG) [illegible]
LT. [illegible] E. [illegible] (USCG) [illegible]
LCDR L. [illegible] (USCG) [illegible]

1. General Situation:

a. The enforcement of the [illegible] to the joint [illegible] States Fish and Wildlife Service and U.S. North Pacific Fisheries [illegible] patrols for the enforcement of [illegible] Act of [illegible] by trawling, in certain areas of the United States, as [illegible] waters of the North Pacific Ocean [illegible] of 175 degrees West [illegible] three miles seaward from [illegible] act of 1954 as amended July [illegible] 1957.

2. Mission:

a. To establish patrols in designated areas on the high seas in support of the enforcement of the North Pacific Fisheries Act, 1954 as amended July 1957.

3. Execution:

a. USCG Air Detachment Adak, to provide two patrols, one on or about 26 June and the other on or about 10 July 1958 in conformity with aerial schedules [illegible] Base Unit of the area offshore north of the Aleutian Peninsula and Islands with destination changes to meet Fishery Area Patrols. Fish and Wildlife Service Agent, Adak, is the Fish and Wildlife Service Agent, [illegible] patrols and coordinate patrols with him, provide such transportation as may be required.

b. USCG Air Detachment Annette to provide three patrols, one each on or about 25 June, 10, 25 July and 10, 25 August 1958, of the area offshore from Cape Addington, Kupreanof Island to Cape St. James, Queen Charlotte Islands.

-1-

OPERATION ORDER
C17CGD No. 1-58 9 May 1958 Page 2

c. CGC KIMBALL to conduct two patrols. One each on 23 July and 6 August 1958, of the area from Cape Muzon to Cape Addington.

x. (1) All vessels and aircraft, when cruising in areas outlined in (a) and (b) above, shall be especially alert for the enforcement of this act.

(2) Vessels shall board all suspected violators of this act.

(3) Contact and coordinate patrols with local Fish and Wildlife Service Agents.

(4) In cases of violation of this act, all pertinent information such as, name of owner, the name, description and location of the vessel shall be reported to this office and the nearest Fish and Wildlife Service Agent as soon as practicable.

(5) The name, description, location, course and speed of all vessels with net gear on board in this area shall be plotted and reported.

(6) Submit a summary report to this office by 15 September 1958, on the number of hours and miles cruised, and the vessels sighted in the areas designated by this order.

4. Administration and Logistics

a. Logistics shall be in accordance with Annex "N" to Seventeenth Coast Guard District Operations Plan 1-57.

5. Command and Signal

a. Comply with Commander, Seventeenth Coast Guard District Operations Plan No. 1-57.

b. Communications shall be in accordance with Annex "D" to Seventeenth Coast Guard District Operations Plan No. 1-57.

c. Commander, Seventeenth Coast Guard District, Juneau, Alaska.

HENRY A. SCHOLL
By direction

Encls: (1) Additional Information on the North Pacific Fisheries Act and Patrols in conjunction with the enforcement of this Act.

(2) Laws and Regulations for Protection of the Commercial Fisheries of Alaska - 1958 (Dept. of the Interior Fish and Wildlife Service Regulatory Announcement 50)

DISTRIBUTION:

USCG ADAK, KODIAK (5)
USCG [illegible], ATTU (5)
USCGC [illegible] (2)
USCGC STORIS (2)
USCGC [illegible] (2)
USCGC [illegible] (2)
USCGC SPAR (2)
USCGC [illegible] (2)
USCGC SUNDEW (2)
USCGC DEPENDABLE (2)
USCGC RACHAL (2)
USCGC CAMPBELL (2)
USCGC WHITE HOLLY (2)
Mr. Howard [illegible], Assistant Regional Director - Fisheries Management, U. S. Fish and Wildlife Service (10)

ENCLOSURE I

ADDITIONAL INFORMATION ON THE NORTH PACIFIC FISHERIES ACT AND PATROLS IN CONJUNCTION WITH THE ENFORCEMENT OF THIS ACT

1. North Pacific Fisheries Act, 1954 was amended July 1957 to include enforcement of a provision to prohibit U.S. Nationals from netting salmon on the high seas (British Columbia Coast). This means outside of the three(3) mile limit.

2. In Alaska, a law prohibits netting of salmon on the high seas, and in July 1957, Canada enacted such a law. The Pacific Coast States have laws which prohibit the unleading of fish so caught in any of their ports. The act as amended, regulates fishing off the coast of Canada. The Japanese will abide by voluntarily prohibiting their Nationals from such fishing.

3. Areas of Probable fishing are as follows:

(1) Near Dixon Entrance
(2) Cape Muson to Cape Addington
(3) Off Queen Charlotte Islands.
(4) North of Alaska Peninsula, particularly near Port Moller or other areas where rivers enter Bristol Bay.

4. Areas would extend from three (3) miles to about 10-15 miles offshore (legal up to 3 miles).

5. Season for Southeast Alaska extends from Mid July to the first of September.
Season for Bristol Bay Area extends from Mid June to Mid August.

6. Vessels engaged in this illegal fishing would usually be large types equipped with net rollers on the stern similar to regular seiners. Nets are special, large and deep, usually nylon and buoyed. Nets cannot be used for any other purpose.

7. Investigate any large type vessel which may be found in such areas by:
(1) Plotting position, course and speed.
(2) Name, nationality, description
(3) Observe dock gear, presence of nets or net handling equipment.
(4) Type of activity. (Whether engaged in fishing, etc.)
(5) Presence of nets in water, buoys visible, etc.

8. Report all vessels which may be engaged in this type of fishing to Commander 17th Coast Guard District and Fish and Wildlife Service for further evaluation.

9. Photos should be taken of vessels which appear to be in violation of this act.

10. Several persons should observe vessels violating this act to serve as witnesses in cases for prosecution.

SUMMARY OF CONSERVATION LAWS REQUIRING CG LAW ENFORCEMENT
SEVENTEENTH COAST GUARD DISTRICT

SUBJECT	LAW SOURCE (including more important provisions) Convention or Treaty	Federal Statutes	Federal Regulations	1 OCTOBER 1963 Coast Guard Law Enforcement Territorial Waters	High Seas
WHALING	International Whaling Convention 1946 (Effective 1948) Parties: CANADA RUSSIA U.S. OTHERS (Not JAPAN) 1. Establish Commission one member each party. 2. Whaling in accordance with provisions. 3. Each nation has primary responsibility for infractions by its own nationals, and by others within its exclusive jurisdiction.	16 U.S.C. 916 1. Unlawful to engage in whaling in violation of the Convention, Rules of the Commission, other Fed. Statutes and Regulations. 2. Requires licenses by whaling ships, factory vessels, etc. 3. Authorizes CG officer to arrest for violations in presence or view; authorizes searches. 4. SecInt authorized to promulgate regs & otherwise administer & enforce. 5. SecTreas (in coop. with SecInt) charged with primary responsibility for "enforcement activities.	50 CFR 230.1 thru 230.61 1. Licenses, seasons, records. 2. FWS designated for enforce. (Also, state employees may be designated as Fed. Law enforcement officers 230.61).	ALL vessels 1. Board by virtue multiple authority. (Primary 14 USC 89) 2. Search with "reasonable cause" to believe there is violation. 3. Arrest for violations in presence or view.	DOMESTIC 1. Same is in territorial waters FOREIGN A. Parties (Canada, Russia, others) 1. Exercise no legal authority. (Document violations for report to sovereign concerned.) B. Non Parties (Japan, others) 1. No violation document also Note: Area application - entire North Pacific Ocean
SEALING & Sea otters)	North Pacific Fur Seal Convention 1957 Parties: CANADA JAPAN RUSSIA U.S. 1. Establish Commission one member each party. 2. Sealing north of 30th parallel in accordance with provisions. 3. Enforcement by any nation on any other party. (It is to be noted that	16 U.S.C. 631 1. Unlawful to engage in sealing or sea otter hunting in violation of convention, etc. 2. Authority to arrest for violations in presence or view; searches with reasonable cause. 3. Guard on patrol to be maintained in water frequented by the seal herds. (ExOrd.7549 direct Commandant to use CG vessels.) 4. SecInt charged with	50 CFR 215 1. Administration of the Pribilofs - prohibits dogs liquor, controls visits to the rookeries.	ALL Vessels Same as under "Whaling" above	DOMESTIC 1. Same as above FOREIGN A. Parties (Canada, Japan, Russia) 1. May board & search on reasonabl cause (relates even to the boarding) th there is violation. Boarding Officer must have certifica in English, Russian, Japanese citing authority & issued by competent gover

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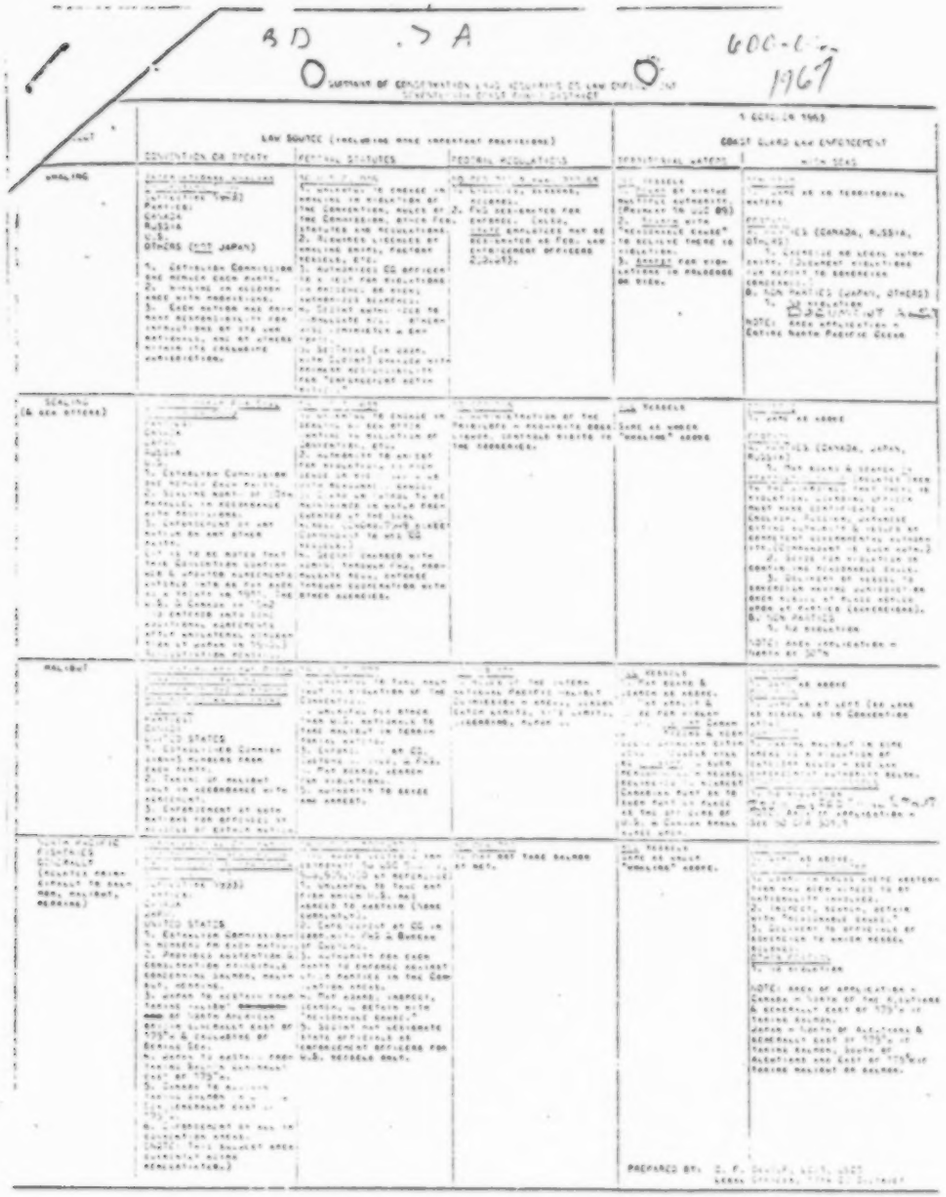

DX DJ

W. P. Studdert

JUN 30 1924
FISHERIES

BI-WEEKLY REPORT

OF MOVEMENTS IN ALASKA FIELD.

W.P.STUDDERT.

on Kittiwake

MAY

16 Left Port Graham 7:30 AM ; Arr. Seldovia 9: AM ; Left Seldovia 11 AM; Arr. Halibut Cove 1:45 PM. Remained at Halibut Cove issuing permits and discussing matters with fishermen for balance of day.

17 Left Halibut Cove 7:30 AM; Dropped anchor off Christiansen's Fox Ranch 9:30 AM; Hove-up and underway 11 AM; ARR. Seldovia 12:30 PM; Remained Seldovia receiving applications for permits until 6:30 PM; Arr. Port Graham 8:30 PM.

18 At Port Graham having machine work done on engine and making minor repairs to boat.

19 Left Port Graham 8:40 AM; Arr.Seldovia 10:15 AM ; Left Seldovia 11:20 AM; Arr. Halibut Cove 2 PM; Left Halibut Cove 3:15 PM; Arr. Ninilchik 10 PM; Left Ninilchik 11:30 PM.

20 Arr. Kenai 3:20 AM; Left Kenai 2:45 PM;

21 Arr. Anchorage 12:30 AM.

22-23 At Anchorage attending to matters pertaining to permits.

24 Left Anchorage 9:25 AM; ARR. Shorty Creek 2:35 PM; Left Shorty Creek 3:25 PM; Arr. Tyonek 4:25 PM; Left Tyonek 7:35 PM;

25 Arr. Anchorage 1;15 A.M. ; Arr. Tyonek 5:15 PM.

26 Left Tyonek 1:15 AM; Anchored off Kenai River 5 AM; Hove up 6:30 AM; Tied up Kenai 9 AM; Went ashore at canneries and town. Left Kenai 6:30 PM; Arr. Nikiski 8:30 PM; Left Nikiski 11:45 M.

27 Anchored above Polly Creek 4:30 AM went ashore among clam diggers and gained impression that clams were not plentiful;however,statements made by diggers were conflicting and the failure to secure more clams may have been due a general lack of experience in digging.
Left Polly Creek at 6 AM; Arr. Snug Harbor 9:45; The Polar Fisheries had packed at this date but 1700 c/s of half flats and 39 c/s of 'picnics'. Mr.Edney,superintendent of the plant,stated that at this time the clams were in poor condition,their appearance in the can being less white than at a time when they are fatter,which in his opinion would be during the month of June and when they would yield one third more meat.
These facts,if substantiated,seem to offer the basis for an advantageous closed season that would limit digging to a period when the quality of the clams is best,and production increased by 30% for the same quantity of clams taken. Left Snug Harbor 10:40 AM; Boarded the Halibut Steamer

Related to Safety

D-J

'ZAPORA' which was fishing off Anchor Point without a permit and without knowledge upon the master's part of the existence of a Reservation.
It was agreed between us that he should continue fishing,which he did as long as we had him in sight,and that he would take the matter up by radio with his headquarters while I communicated with the Bureau,and that we should apprise one another by radio of advices received. Boarded Halibut Steamer NEW ENGLAND,1;10 PM,also fishing without a permit and had a similar understanding with her master. 4:35 PM Arr. Seldovia.

'28 Left Seldovia 8:40 AM; Left The Kittiwake in Port Graham and taking the skiff pulled with Schroeder to a point where we could cross overland to English Bay,hoping to apprehend the fishermen at work in,or too near,the stream as my suspicions are that considerable illegal fishing may go on at that place which has no stream watchman this season.
No fishing was going on when we arrived.
Schroeder and myself made our way back to the lakes at the head of the stream which is of good size. We found three lakes,one probably four miles in length,the last lies several miles from the beach. A fuller investigation will be made of that spawning area later and a proper report submitted.
I found the work done in blasting away a part of the waterfall in the stream last year a considerable aid to the ascent of salmon.
6 PM returned to Port Graham.

29 Left Port Graham 9:30 AM; Arr. English Bay 10:30 AM; Left English Bay 11:40 AM; Arr. Seldovia 2:10 PM; Left Seldovia 9:15 PM; Arr. Halibut Cove 11:38 PM.

30 Left Halibut Cove 9:15 AM; Arr,head of Kachemak Bay 11:38 AM; Went ashore and proceeded up Fox River,a red salmon stream,to the first waterfall,nine feet high and flowing over a coal ledge in such a manner as to offer almost an impassible barrier to salmon. The waterfall is from seven to eight miles from the beach. Schroeder accompanied me,and we also found a log jam thrown across the stream by a recent freshet. The jam offered a material obstacle to the passage of fish. Returned to Kittiwake 10 PM.
Underway 10:50 P.M.; XXXXXXXXXXXXXX

31 Arr. Halibut Cove 12:30 AM; Left Halibut Cove 8 AM; Arr. Seldovia 11 AM; 2:30 PM started up Seldovia River which is a large,clear stream that should be favorable for spawning purposes. A waterfall was found between two and three miles above the beach. A large lake is said to lie about fifteen miles from salt water but as far as I can learn no red salmon are known to run up Seldovia River. Blasting away the waterfall which now forms a serious impediment and stocking the stream with fry might produce a valuable run of reds in this river. It is my plan to visit the lake when the time is right.

R. D. Shuddert,

DX DO

JUN 25 1923

Seattle, June 20, 1923.

Baker, Bureau Fisheries, Cordova.

From Commissioner, quote, if Cook Inlet halibut fishing by vessel Ken Garland of San Juan Fishing and Packing Company is within three mile limit necessary secure permit (stop) You are authorized handle matter locally (stop) Report action taken, unquote.

Russell.

official business.

Field Superintendent.

copy to Washington office.

Telegram, Russell to Baker, June 20, 1923.

BEST COPY AVAILABLE

DX D2

DEPARTMENT OF COMMERCE
BUREAU OF FISHERIES

Ketchikan, Alaska,

August 8, 1935.

Subject: Violations

Bureau of Fisheries

Juneau, Alaska

Gentlemen:

On the 4th instant, while patrolling waters in Pierce Canal, intercepted a thirty foot Canadian boat fishing for halibut in American waters close to the boundary. Captain Todd wired this office as follows:

"Holding two Canadian Jap fishermen boat seized while fishing for halibut in mouth of Edwards Passage stop Boat has no name no number no papers thirty feet long gas new awaiting your instructions"

During my service with the Bureau I had not had any experience with the seizure of Canadian boats and felt that the local Customs office could give me good advice in the matter. Customs officials recalled that about three years ago several American trolling boats had been seized by Canadian patrols and that a great deal of international correspondence resulted. They also informed me that in the past year the Canadian Government had been very lenient with small American fishing boats in Canadian waters. I was told that if our office seized the Canadian boat for such a minor offense, it might mean that American fishing boats would henceforth suffer from severe Canadian patrol.

To avoid the possibility of international complications it was thought best to release the Canadian boat being held by the Kittiwake. My instructions, by wire, to Captain Todd were as follows:

"Release boat stop Our policy to be lenient with Canadian boats fishing halibut close to boundary."

Very truly yours,

Clarence L. Olson

CLARENCE L. OLSON, Warden

cc: Washington
Seattle

Letter, Clarence L. Olson to Bureau of Fisheries, Juneau, Alaska, August 8, 1935.

Juneau, Alaska
August 13, 1935.

Subject: Violations.

Mr. Clarence L. Olson, Warden,
Bureau of Fisheries,
Ketchikan, Alaska.

Dear Mr. Olson:

This will acknowledge the receipt of your letter of August 8, 1935 relative to the apprehension by the patrol boat Kittiwake of a Canadian boat fishing for halibut in American waters of Pierce Canal close to the boundary line.

This office feels that the action you have taken in this matter is very proper and that such a policy should be pursued unless the practice of getting across the boundary into American waters becomes too habitual.

Copy of a letter from Mr. Thompson of the International Fisheries Commission relative to American trollers fishing in certain closed areas near Masset, British Columbia has been sent to you together with a copy of letter which I addressed to the Ketchikan Chronicle suggesting that a warning notice be run in the paper.

The practice as followed at present will, therefore, be continued unless instructions to the contrary are received from the Washington office.

Very truly yours,

Agent.

LGT:EB.

Copy to Washington office.
Copy to Seattle office.

Letter, Agent, Juneau, Alaska to Clarence L. Olson, August 13, 1935.

600-06
CR 1500-01

DX EB

December 27, 1968

Memorandum

To: Solicitor, Department of the Interior, Anchorage

From: Regional Director, [illegible]

Subject: United States v. State of Alaska, Civil No. 45-67

This is in response to the memorandum from Field Solicitor Richard [illegible] inquiry to Harry Kirkness and Walter Kirkness ... subject ...

Because of the large glacial runoff in Cook Inlet, halibut fishing in that area is confined to the inner regions essentially south of a line between Archer Point northwest of Homer and Chinitna Bay opposite the Inlet. As mentioned in Mr. Bradley's inquiry, Cook Inlet is not an area of intense halibut fishing and is exploited primarily by smaller local boats. Most of the halibut fishing vessels in the Kodiak area work on the east side of Cook Inlet on to the Kenai Peninsula area along the lower west side of the inlet. Alaska Validation Officers are usually by this agency in order that they may be familiar with the halibut fishing ... These validations are done principally to facilitate the periodic ... for the evaluation of vessels and gear used in the halibut fisheries. ... halibut grounds, but do perform technical services for the smaller local halibut fishing boats.

Cook Inlet has never been extensively fished by fleets of foreign nations. Vessels of Japan and the Soviet Union which are so prevalent elsewhere along Alaska's coast have never operated in Cook Inlet (the area north of the Barren Islands). Canadian vessels have infrequently fished for halibut in lower Cook Inlet but not to any extent during recent years. Apparently the question of Canadian halibut fishing in lower Cook Inlet is also being directly explored by the Department of Justice. The attached copy of a letter from the International Pacific Halibut Commission indicates that they have been queried on this subject. The only known foreign activity in the area, which we doubt has any significance, was the Japanese

Memorandum, Harry L. Rietze to Solicitor, Department of the Interior, Anchorage, December 27, 1968.

purchase of United States caught salmon in Cook Inlet in July and August of 1966. This venture was similar to an earlier Japanese purchase of American-caught salmon in Prince William Sound during July and August of 1964. Both these ventures were studied by the United States Government and found to be in accordance with the "abstention" requirements of the International North Pacific Fisheries Convention. Mr. Bradley asked about the information previously supplied the Department of Justice in Washington, D. C., concerning this subject. In response to a telephone inquiry from Walter Kirkness, who is now with our Central Office in Washington, D. C., we advised that we possessed no records of Japanese, Soviet, or Canadian fishing in Cook Inlet. Because of the urgency for this information, it was verbally passed to Mr. Kirkness for relay to the Department of Justice.

Regarding Mr. Bradley's question on prior regulations, the enabling act for the International Pacific Halibut Convention has been enforced by the Federal Government consistently since the 1930's. The current law was being enforced by this agency prior to statehood and is, of course, still applicable. Regulations of the Alaska Department of Fish and Game concerning halibut fishing were adopted in 1961 as Section 102.42 of their commercial fishing regulations. These regulations have been continuously since that time with minor revisions to make applicable the International Pacific Halibut Commission regulations for that particular year.

The applicability of the State's regulation 102.42 to vessels fishing in Lower Cook Inlet was also sought by Mr. Bradley. This Bureau has not been charged with enforcement of State fishery regulations and, therefore, we have never attempted to interpret this section or to speculate on its applicability to foreign or domestic vessels fishing in Cook Inlet. Concerning Mr. Bradley's specific question, we have no information which would indicate that the State waives or surrenders any requirements upon Alaskan fishing vessels in the lower Cook Inlet area would ordinarily require in waters clearly within the State's jurisdiction.

Because Lower Cook Inlet is not the scene of an intensive Japanese or Soviet fishery or of a North American fishery for halibut, we cannot provide a great deal of relevant information. The same situation applies to Prince William Sound.

(SGD) HARRY L. RIETZE

Harry L. Rietze

Attachment

cc: Mr. Bradley

copy with attachment: Mr. Kirkness

-2-

RCHaab/cm

DX EC

RECEIVED AUG 31 1961

STATE OF ALASKA
OFFICE OF THE GOVERNOR
Juneau

C O P Y

August 7, 1961

Mr. Harry L. Rietze, Regional Director
Bureau of Commercial Fisheries
United States Fish and Wildlife Service
Juneau, Alaska

Mr. C. L. Anderson, Commissioner
Alaska Department of Fish and Game
Juneau, Alaska

Gentlemen:

I am alarmed with the absence of immediate communication to proper authority of information regarding incidents beginning on July 3, 1961, wherein it is alleged that foreign vessels had violated State waters.

The Governor of Alaska was not aware of these reports or sightings until July 31, 1961. On that date a communication was received from the State Commissioner of Fish and Game requesting that the Governor communicate with the United States Secretary of State urging increased vigilance in the affected areas by the U. S. Navy and U. S. Coast Guard.

Upon receiving this communication from the State Commissioner of Fish and Game, the Governor of Alaska assumed that the Commander, Alaska Sea Frontier at Kodiak, and the Commander-in-Chief, Alaska at Elmendorf, had long since been advised of these incidents. I have since learned that my assumption in this regard was wrong. It is difficult for me to believe that the national security aspect of such encroachment would not instantly cause those persons who assert they witnessed such violations, to contact the Commander, Alaska Sea Frontier, Commander-in-Chief, Alaska, and the Governor of Alaska.

The almost unbelievable facts of the situation are these: Several sightings allegedly occured during the month of July, 1961, in which foreign vessels were observed violating State of Alaska waters. Representatives of the Federal Commercial Fisheries Division of the Fish and Wildlife Service observed such violations and for a period of weeks continued such observances and failed to alert the Commander, Alaska Sea Frontier, Commander-in-Chief, Alaska or the Governor of Alaska of the situation.

Letter, William A. Egan to Harry L. Rietze and C. L. Anderson,
August 7, 1961.

Mr. Harry L. Rietze
Mr. C. L. Anderson

August 7, 1961

As Governor of Alaska, I am embarrassed to find that such a neglect could occur, particularly in these days of national peril. I am initiating all possible steps to insure that such laxity will not again happen in the State of Alaska.

I am this date sending a directive to all State of Alaska Department heads, ordering them to inform State employees to immediately report unusual movements of foreign ships or persons that might have some bearing on national security or be in violation of State or Federal law, to the Commander-in-Chief, Alaska, Commander, Alaska Sea Frontier, and to the Governor of Alaska, prior to the time a report is made to the appropriate Department head. In this sequence, valuable time can be saved and a possible disaster more likely averted.

Copies of this letter will be mailed to the U. S. Secretary of State, the Secretary of Defense, the Director, Bureau of Commercial Fisheries, Washington, D. C., and all members of Alaska's Congressional Delegation. The Commander-in-Chief, Alaska, Commander, Alaska Sea Frontier, and the Commander, 17th Coast Guard District will also receive copies.

Sincerely,

/s/ William A. Egan

William A. Egan
Governor

DEPARTMENT OF STATE
WASHINGTON

COPY

August 15, 1961

Dear Governor Egan:

I refer to your telegram of August 1 regarding reports of whaling operations by Soviet and Japanese vessels within Alaska's territorial waters, and to our interim reply of August 3. The Department appreciates your bringing this matter to its attention.

We have held discussions on the subject with the Navy Department and the Coast Guard, as well as with the Fish and Wildlife Service, which, as you know, also has enforcement responsibilities in the Alaskan area. The Navy informs us that it is aware of the situation you describe, since air patrols of the Alaska Sea Frontier have on occasion observed Soviet and Japanese whaling vessels conducting operations within United States territorial waters. These patrols have not, however, seen any evidence of activities on the part of these foreign vessels which would constitute a threat to the security of the United States. The Commander, Alaska Sea Frontier, has been instructed to keep in close touch with your office and with the Commander, 17th Coast Guard District. The Navy also informs us that, as customary in the past, it stands ready to assist the Coast Guard upon the latter's request.

The Coast Guard is also aware of the circumstances, since in addition to reports from their own air patrols they also receive the reports of the Navy air patrols. (Apparently, all sightings of foreign vessels inside our territorial waters have been from the air, except for an observation from Amchitka Island and a recent observation by a research vessel of the Fisheries Research Institute.) Also, as you know, the Coast Guard carries out a surface patrol in the Bering Sea during the fishing season each year. Close liaison is maintained with the Commander, Alaska Sea Frontier, and with the Fish and Wildlife Service by the Commander, 17th Coast Guard District, who has also reported that his command is standing by and is ready to assist the Fish and Wildlife Service on request with aircraft and additional cutters as required. We are informed by the Fish and Wildlife Service that such a request will be made since the equipment of the latter agency is already being utilized in enforcement activities to the maximum extent possible.

The most

The Honorable
William A. Egan,
Governor of Alaska,
Juneau.

Letter, William C. Herrington to William A. Egan, August 15, 1961, and related correspondence.

BEST COPY AVAILABLE

The most effective way of controlling such foreign activities would be, of course, to seize and arrest such vessels when found conducting operations within United States territorial waters and to impose penalties. There are two Federal statutes which have been cited as possibly providing authority for such a procedure in the Alaskan area and in the present case. One of these is the "Alien Fishing Restriction Act" (43 U.S.C. 243), which was applicable to Alaska as a Territory. In view of the realization of statehood by Alaska, the status of this Act is uncertain. The other is the "Whaling Convention Act of 1949" (16 U.S.C. 916), but the applicability of this Act to foreign nationals or vessels has also been questioned. We have asked the Department of the Interior and the Coast Guard for a formal opinion on these questions. Pending such clarification we are asking the Federal enforcement agencies to request an offending vessel to cease its operations and to escort it from territorial waters.

As you know, under our system of government, the control of fisheries within territorial waters has traditionally been left to the several States. We should appreciate being informed of the provisions of whatever laws of the State of Alaska might be applicable in the present case, since such legislation might have a definite bearing on Federal enforcement capabilities.

We feel sure that the situation will be considerably improved by the contemplated provision of additional Coast Guard aircraft and/or vessels. If we can be of any further assistance, please let us know.

Sincerely yours,

For the Secretary of State:

Wm. C. Herrington
Special Assistant
for Fisheries and Wildlife
to the Under Secretary

cc: Lt. Cdr. Platts, Navy
Capt. Carlson, Coast Guard
Mr. Baker, BCF Juneau

Director, BCF, Washington, D. C. July 25, 1961

Regional Director, BCF, Juneau, Alaska

Foreign Fishing Vessel Sightings

The probability of Russian and Japanese whaling vessels operating in territorial waters, as outlined in our subject wire of July 14, is substantiated by a report received today from Refuge Manager Jones, Amchitka. Mr. Jones' memo is quoted:

"On July 3 the undersigned observed two whalers about 2 to 3 miles north of Chitka Point on Amchitka Island. Later they were joined by a third, larger vessel. One of the whalers had the number 21 on her bridge while the other had the number157 on her bridge. The third was not near enough to discern any numbers. These vessels were taking whales at the time we watched them. We could make out no flag to identify the nationality but we believe them to be Japanese. The whalers looked to be 150 to 175 feet long and quite powerful.

"A Japense fishing vessel of about 125 feet length ran aground and was abandoned on Amatignak I., the southernmost of the Aleutian Islands. This took place about three weeks ago."

Harry L. Rietze

cc: Coast Guard
Lindsley

HCScudder:ja

Fish & Wildlife Service

Commercial Fisheries

NIGHT LETTER

Juneau, Alaska July 21, 1961

OIC

USARAL COMMGEN WILDWOOD STATION ALASKA

PASS TO PRS TELETYPE STATION, SEATTLE, WASHINGTON

Unclass. Director, Bureau of Commercial Fisheries, Washington, D. C.

For your information. FRI vessel Renown Captain Birger Hanson reports Russian whale catcher less than 2 miles south of Unalga Island, Aleutians, July 16 with 2 whale kills alongside. 3rd whale lost in tiderip. Russian position given as 179°4'35" West 51°33'30" North. We are verifying position and method of fix and requesting excerpts fr. Renown log. Will transmit additional details as they are available.

Harry L. Rietze, Bureau of Commercial Fisheries

Harry L. Rietze, Regional Director
Bureau of Commercial Fisheries, USFWS

cc: Roy Lindsley

JLRietze:ja

Fish & Wildlife Service
Commercial Fisheries

NIGHT LETTER

Juneau, Alaska 19 July 1961

OIC
USARAL COMMGEN WILDWOOD STATION ALASKA
Unclass. Mr. R. L. Burgner, Assistant Director, Fisheries Research Institute, University of Washington, Seattle, Washington. Urtel July 18 re Russian whale killer. If report can be verified, Russian vessel in violation of our Territorial waters. Furnish following info:
Name of U. S. sighting vessel and Captain; verify distance from Unalga Islan
How was distance from Island determined? Can position of U.S. and Russian vessels be excerpted from U. S. vessel's log?

Harry L. Rietze, Regional Director, Bureau of Commercial Fisheries

Harry L. Rietze, Regional Director
Bureau of Commercial Fisheries, USFWS

HLRietze: jh

Fish & Wildlife Service
Commercial Fisheries

NIGHT LETTER

Juneau, Alaska 19 July 1961

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USARAL COMMGEN WILDWOOD STATION ALASKA
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Name of U.S. sighting vessel and Captain; verify distance from Unalga Island.
How was distance from Island determined? Can position of U.S. and Russian vessels be excerpted from U.S. vessel's log?

Harry L. Rietze, Regional Director, Bureau of Commercial Fisheries

Harry L. Rietze, Regional Director
Bureau of Commercial Fisheries, USFWS

HLRietze:jh

569-731 O - 75 - 26

August 1, 1961, Juneau, Alaska

HONORABLE DEAN RUSK
SECRETARY OF STATE
WASHINGTON, D. C.

RECEIVED AUG 4 1961

RUSSIAN AND JAPANESE FISHING VESSELS REPORTED CONDUCTING WHALING OPERATIONS WITHIN TERRITORIAL LIMITS ALASKA WATERS. STATE PATROL VESSELS UNABLE COPE WITH SITUATION. URGE STATE DEPARTMENT REQUEST NAVY AND COAST GUARD INCREASE VIGILANCE IMMEDIATELY WITH ADDITIONAL VESSELS DISPATCHED TO SCENE IF POSSIBLE.

WILLIAM A. EGAN
GOVERNOR

Office of the Governor

cc: Bartlett
Crusaing
Rivers

DX EF

Hydaburg, Alaska
January 27, 1940

U. S. Bureau of Fisheries

Gentlemen:

I would like to have some information on trawling rules and regulations pertaining to S. E. Alaska

I am interesting in scrap fish, crabs and shrimp. Also are there any regulations for trawling outside the three mile limits.

Are there any pamphlets out pertaining to the freezing and filleting of bottom fish?

Yours sincerely

Villian Tregoning

Orig. sent to Wash. Off.

Letter, William Tregoning to United States Bureau of Fisheries, January 27, 1940.

Seattle, Washington
February 7, 1940

Subject: Alaska fishery regulations

Mr. William Tregoning,
Hydaburg, Alaska

Dear Sir:

Receipt is acknowledged of your letter of January 27, 1940, requesting information on trawling rules and regulations pertaining to Southeastern Alaska.

We are enclosing herewith copy of the Alaska Fishery Regulations for 1940 and you will note regulations for salmon fishing in Southeastern Alaska begin on Page 29, and regulations for shelly and such fisheries as the bottom of Page 42 and at the top of Page 43. Under General Regulations on Page 43, paragraphs 4 and 6 will furnish you information on the use of trawls.

Your letter is being forwarded to our Washington office for reply in regard to trawling outside the three-mile limit. We are also requesting that the Washington office furnish you with ~~any~~ pamphlets they may have on freezing and filleting of both fish, as we have no literature on these subjects in this office at the present time.

Yours very truly,

Chief Clerk

2/22
Enc
cc Wash. Office

Letter, Chief Clerk, Seattle, Washington, to William Tregoning, February 7, 1940.

February 17, 1940

Subject: Alaska fishery regulations

Mr. William Tregoning,

Hydaburg, Alaska.

Dear Mr. Tregoning:

In further reply to your letter of January 27 addressed to the Bureau's Seattle Office requesting information concerning restrictions on trawling beyond the three-mile limit, you are advised that the only restriction now applicable beyond the territorial limits of Alaska is that which prohibits importation into the Territory of Alaska for purposes other than personal use, salmon from waters outside the jurisdiction of the United States taken during any closed period provided for by the Alaska fishery laws and regulations.

I am sending you herewith a number of mimeographed memoranda concerning the freezing and filleting of fish.

Very truly yours,

Chas. E. Jackson
Acting Commissioner

Enclosure

CC: Seattle office (blind)

copy given Juneau Office
" " Warden, S.S. "Black Hawk"

Letter, Chas. E. Jackson, Acting Commission, to William Tregoning, February 17, 1940.

DX EI

Class of Service
This is a Fully Paid Telegram or Cable-gram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

1201

W. P. MARSHALL, PRESIDENT

SYMBOLS
DL=Day Letter
NL=Night Letter
LT=Int'l Letter Telegram
WL=Int'l Wireless Ltr

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1955 FEB 1 AM 4 32

ICA015

O.SEA054 LONG NL PD=SEATTLE WASH 1

DIRECTOR UNITED STATESG. FISH AND WILDLIFE SERVICE=

WASHDC=

GENTLEMEN SEATTLE WILDLIFE SERVICE REFERS MATTER OF ELECTRICAL FISHING TO WASHINGTON WE WISH TO KNOW IS IT POSSIBLE TO CARRY OUT EXPERIMENTAL ELECTRICAL SALMON FISHING IN ALASKA IN UNPROHIBITED AREAS WHERE THERE IS LITTLE OR NO COMMERCIAL FISHING LIKE TO BE ABLE TO EXPERIMENTALLY COMMERCIALLY FISH IN THE ALEUTIAN CHAIN AND IN UNPROHIBITED AREAS OTHER THAN THOSE DEFINED AS

TERRITORIAL WATERS OUTSIDE OF 3 MILE LIMIT. PARTIAL ANSWER TO URGENT PROBLEM NEEDED SOON AS POSSIBLE FOR REFERANCE TO ACCENTUATE FOREIGN OR DOMESTIC CONTRACTORS. THIS SYSTEM MAY MAKE IT POSSIBLE FOR AMERICAN FISHERIES TO BE WORLD COMPETITIVE. ANSWER IS URGENTLY REQUESTED=

LEKTRONET INC 2601 WEST 54 SEATTLE 7 WASH=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

Telegrams between Lektronet, Inc and J. L. Farley, February 1, February 2, February 8, February 11, 1955.

Ralph Baker

Fish and Wildlife Service
February 1, 1955

Lektronet Inc.
2601 West 54th Street
Seattle 7, Washington

Hotel gear could be fished outside 3 mile limit and salmon brought into Alaska during open season in Alaskan waters. Cannot advise you if fishing in territorial waters including Aleutions permissible without at least brief description of gear and manner of operation.

John L. Farley, Director
Fish and Wildlife Service

By:
Ralph C. Baker

DA:Erickson:cpw

RECORDS & COMM
FEB 1 3 58 PM '55
FISH AND WILDLIFE SERVICE

CLASS OF SERVICE

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WESTERN UNION

W. P. MARSHALL, PRESIDENT

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WP061 PD=SEATTLE WASH 1 114PMP=

JOHN L FARLEY, DIRECTOR=

FISH AND WILD LIFE SERVICE=

AF

RE TELEGRAM OPERATION SIMILAR TO COBB OPERATION USING OUR GEAR SEE COMMERCIAL FISHERIES REVIEW FOR FEBRUARY 54=

LEKTRONET INC=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

SE UAF 23 I-FUS 42

UASHINGTON 2-1-55 150P

LEKTRONET INC.

2601 UEST 54TH ST SE

RETEL GEAR COULD BE FISHED OUTSIDE 3 MILE LIMIT AND SALMON BROUGHT INTO ALASKA DURING OPEN SEASON IN ALASKAN UATER. CANNOT ADVISE YOU IF FISHING IN TERRITORIAL UATERS INCLUDING ALEUTIANS PERMISSIBLE UITHOUT AT LEAST BRIEF DESCRIPTION OF GEAR AND MANNER OF OPERATION.

JOHN L FARLEY, DIR FUS

EF 250P

RECEIVED
FEB 2 1955

OCE UAF 21 I-FUS 44

WASHINGTON 2-2-55 30GP

LEKTRONET INC

2601 WEST 54TH ST SE

RETEL GEAR AS USED BY CODD FOR HERRING NOT LEGAL FOR SALMON IN TERRITORIAL WATERS OF ALASKA. SEE SECTION 102.15 OF REGULATIONS. ALSO SEE PART 106 FOR ALEUTIAN ISLANDS AREA SEASONS IF SALMON ARE TO BE BROUGHT IN FROM OUTSIDE THE 3 MILE LIMIT.

J L FARLEY DIR FUS BY RALPH C BAKER FUS

102.15 106 3

ONS 313P

BEST COPY AVAILABLE

Aleutians

Erickson
Baker

Fish and Wildlife Service
FEBRUARY 2, 1955

LEKTRONET INC.
2601 WEST 54TH STREET
SEATTLE 7, WASHINGTON

RETEL GEAR AS USED BY CODD FOR HERRING NOT LEGAL FOR SALMON IN TERRITORIAL WATERS OF ALASKA. SEE SECTION 102.15 OF REGULATIONS. ALSO SEE PART 106 FOR ALEUTIAN ISLANDS AREA SEASONS IF SALMON ARE TO BE BROUGHT IN FROM OUTSIDE THE 3 MILE LIMIT.

JOHN L. FARLEY, DIRECTOR
FISH AND WILDLIFE SERVICE

BY: Ralph C. Baker
RALPH C. BAKER

D:Erickson:cpw

RECEIVED
FEB 5 8 55 AM '55
AREA MAN. SEATTLE SERVICE

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION
TELEGRAM

W. P. MARSHALL, PRESIDENT

SYMBOLS
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OA565

AF

O.SEA964 NL PD=SEATTLE WASH 7= 1955 FEB 8 AM 3 06

DIRECTOR JOHN L FARLEY=

FISH AND WILD LIFE SERVICE WASHDC=

RETEL REQUEST CLARIFICATION CONCURRENCE OUR GEAR LEGAL FOR COMMERCIAL FISHING THREE MILES OFF SHORE GENERALLY IN ALASKA INCLUDING OFF SHORE EGEGIK UGASHIK ALEUTIAN ISLANDS UNIMAK ISLAND ALEUTIAN PENINSULA KODIAK ISLAND COOKE INLET SOUTHEASTERN ETC=

LEKTRONET INC=..

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

TELETYPE

Xerox copy

Summers

FISH AND WILDLIFE SERVICE
FEBRUARY 11, 1955

LEKTRONET INC.
2601 WEST 54TH STREET
SEATTLE 7, WASHINGTON

RETEL EIGHTH CURRENT ALASKA COMMERCIAL FISHERY REGULATIONS APPLY ONLY TO TERRITORIAL WATERS AS DESCRIBED IN REGULATIONS. UNRESTRICTED FISHING BY ANY FORM OF GEAR IN AREAS OUTSIDE TERRITORIAL WATERS IF SUCCESSFUL WOULD NULLIFY EFFECTIVENESS PRESENT CONSERVATION MEASURES AND JEOPARDIZE SALMON RUNS. SUCH ACTIVITY UNDOUBTEDLY WOULD LEAD TO EARLY CONTROL MEASURES.

(SGD) JOHN L. FARLEY
JOHN L FARLEY, DIRECTOR
FISH AND WILDLIFE SERVICE

SEThompson:cpw:jm

RECORDS & COMM.
FEB 12 9 31 AM '55
FISH AND WILDLIFE SERVICE

OSE UAF 2 I-FUS 50

WASHINGTON 2-15-55 954A

LEKTRONET INC

2601 WEST 54TH ST SE

RETEL EIGHTH CURRENT ALASKA COMMERCIAL FISHERY REGULATIONS APPLY ONLY TO TERRITORIAL WATERS AS DESCRIBED IN REGULATIONS. UNRESTRICTED FISHING BY NEW FORM OF GEAR IN AREAS OUTSIDE TERRITORIAL WATERS IF SUCCESSFUL WOULD NULLIFY EFFECTIVENESS PRESENT CONSERVATION MEASURES AND JEOPORADIZE SALMON RUNS. SUCH ACTIVITY UNDOUBTEDLY WOULD LEAD TO EARLY CONTROL MEASURES.

J L FARLEY DIR FUS

ONS 1021A

DX EJ

JAN 27

Star Charter Svc.,
Ketchikan, Alaska.
January 26th, 1948.

U.S. Fish & Wildlife,
Juneau, Alaska.

Gentlemen: Attn: Mr. Bonham.

I am a fisherman and have been for the past twenty years. I was still moved in Bristol Bay, Copper River Delta, Yakutat Bay and seined in Prince William Sound, Southeastern Alaska and Puget Sound.

This morning I called on the department and read the 1948 regulations. I notice that Section 4a for Copper River Delta and Bristol Bay area is somewhat the same as last year except the new regulations limited the gear by forty fathoms and called for a thirty hour week closed period from 6 p.m. Saturday to 12 noon Monday. For the boats that cannot fish offshore this may work a severe hardship as the fish run may pass by on this schedule day. I assume, and so the fishermen on the Alaska Peninsula and Bristol Bay, but they also feel that the men in the sloughs may always be left alone. For that reason a number of fishermen have built larger boats and they fish offshore. Myself, I fish offshore most of the time weather permitting and consider it legitimate to fish beyond the three mile limit any time.

What I would like to know is this. If I fish beyond the three mile limit on a Wednesday during the copper river season, would I be permitted to bring my catch into the Copper River area during the closed period, for delivery to the cannery tenders.

An early reply will be appreciated.

Yours very truly,

Tonnes Hanson Jr.

Letter, Tonnes Hanson, Jr. to U. S. Fish and Wildlife Service, January 26, 1948.

[illegible]

[illegible]

Mr. Tonnes Hanson, Jr.
[illegible]
Seattle, Washington

Dear Mr. Hanson:

Reference is made to your letter of January 26 [illegible] the regular season is to be closed [illegible] the Pacific Coast [illegible] to give us [illegible] some question, will be very much [illegible] your wish as a [illegible] buyer on the Oyster River area.

Section 1 of the Act of June 10, 1924 provides:

"It shall be unlawful to transport or have [illegible] the boundaries of Alaska, [illegible] any fish which may [illegible] any fish or shellfish, taken [illegible] outside the jurisdiction of the United States during any closed season [illegible] provided for by the laws of the territory [illegible] thereunder."

In view of the foregoing and especially since part of your operations, other than the transportation of the Act of June 10, 1924, it is obvious that it is [illegible] for you to fish beyond the Seattle limit [illegible] and attempt to sell the fish where during any closed period.

Very truly yours,

H. C. Scudder
Asst. Fishing Supervisor

Letter, H. C. Scudder to Tonnes Hanson, Jr., January 30, 1948.

FN 101

DX EK

FISHERIES
AUG 7 - 1924
ALASKA

Seattle August 1, 1924.

O'Malley,

Bureau Fisheries,
Juneau, Alaska.

Understand some of mild cure operators on West coast Prince of Wales Island seriously considering taking outfit outside three mile limit and putting up pack during closed season and bring pack to states without touching any points Alaska. Suggest have warships watch this procedure and see if operators come inside Bureau's jurisdiction on way to states.

Russell

Official business

Field Superintendent

Telegram, Russell to O'Malley, August 1, 1924.

- copy -

Juneau, Ala., Aug. 1, 1924.

AUG 1924 FISHERIES

Russell

1217 L C Smith Bldg Seattle, Wn.

There is nothing in present law that prohibits fishing in open areas and canning catch in canneries within closed areas, stop, if you get any further information regarding mild curing outside three mile limit wire me at Juneau.

O'Malley,

1 48 p

Telegram, O'Malley to Russell, August 1, 1924.

Seattle, Washington. June 30, 1929.

Hynes,

Bureau of Fisheries,

Ketchikan, Alaska.

Reply your letter wire treaty nine relative fish taken outside three mile limit Bureau has no control over fishing on high seas but can seize fish when landed if absolute proof fish caught during closed season/stop/see Department Circular two five one Section one last paragraph. Commissioner departed Ketchikan noon today aboard Brant.

Russell

Offical business,

Telegram, Russell to Hynes, June 30, 1929.

DX EL

February 25, 1952

Koppen, FWS, Cordova, Alaska

Fishery Management Supervisor, FWS, Juneau, Alaska

Interpretation of Section 111.20, Prince William Sound, and 112.15, Copper River Area.

In answer to your memorandum of February 21 on the above subject, I am returning the chart which you had made up, and have indicated roughly the additional areas which were meant to be closed by the above-mentioned Sections. You are correct in your interpretation of the closed season north of 60 deg. 22' and east of 146 deg. 40'. In addition, all other waters are closed from July 16 to August 15. This closure will include all the waters within three miles of the outside shore line. That is, all waters regularly recognized as being under our jurisdiction. It has been the accepted policy that we do not have jurisdiction three miles off the continental shore line. Hence, beyond the three-mile limit there will be no closed season. It is my understanding that crab pots cannot be successfully used more than three miles offshore because of excessive sanding and adverse water conditions.

These two Sections, then, will mean a virtual closure of the crab fishing in that month - July 16 to August 15, Since no fishing could be done except in the area more than three miles offshore. We doubt that enough crabs can be taken outside this three-mile limit to maintain a crab operation.

R. F. SHUMAN

Enclosure

Memorandum, R. F. Shuman to Fishery Management Supervisor, Fish and Wildlife Service, February 25, 1952.

DX EM

- COPY -

2103-21

January 7, 1916.

IN RE limiting fishing in Bering Sea.

The opinion of this office is requested as to whether or not the Department is authorized by section 6 of the Alaska Fisheries Act of June 26, 1906 (34 Stat. 478) to issue a regulation limiting the size of the mesh of gill nets used in the red salmon fisheries of Bering Sea to a minimum of 5½ inches, stretched mesh.

Section 6 provides as follows:

"The Secretary of Commerce may, in his discretion, set aside any streams or lakes as reserves for spawning grounds, in which fishing may be limited or entirely prohibited; and when, in his judgment, the results of fishing operations in any stream, or off the mouth thereof, indicate that the number of salmon taken is larger than the natural production of salmon in such stream, he is authorized to establish close seasons or to limit or prohibit fishing entirely for one year or more within such stream or within five hundred yards of the mouth thereof, so as to permit salmon to increase: * * **

In an opinion of this office, dated January 27, 1914, it was held that the provisions of this section extended to any of the Alaskan waters over which the United States has jurisdiction, and in which fish of any kind or species are accustomed to spawn, and in an opinion dated February 4, 1914, wherein was considered the right of the Department under section 6 to limit fishing in parts of the sea several miles in extent, it was held (1) that as these waters were not the accustomed spawning places of salmon or other food fishes, they could not be set aside as spawning preserves, and (2) as they were not salmon streams the Secretary had no authority to close them under the power

Letter containing opinion, A. L. Thurman, Solicitor, to the Secretary of Commerce, January 7, 1916; referred to the Bureau of Fisheries, January 8, 1916.

granted to him to close such streams, and (3) that the only power that the Secretary had over such waters was that of prohibiting fishing, under certain conditions, within 500 yards from the mouth of salmon streams. The ruling laid down in this latter opinion is no applicable to the sea itself as to "arms of the sea," and if the Secretary has no authority under section 6 to limit or prohibit fishing in "arms of the sea," he likewise, for the same reason, is without authority to prohibit or limit fishing in the sea itself.

With regard to the suggestion of the Bureau that possibly section 11 of the Fisheries Act empowers the Department to limit fishing in Bering Sea, it is my opinion that no such power is granted by this section. The section provides:

> "The catching or killing, except with rod, spear, or gaff, of any fish of any kind or species whatsoever in any of the waters of Alaska over which the United States has jurisdiction, shall be subject to the provisions of this Act, and the Secretary of Commerce is hereby authorized to make and establish such rules and regulations not inconsistent with law as may be necessary to carry into effect the provisions of this Act."

This section is a general provision enacted, apparently, for the purpose of including within the provisions of the Fisheries Act "fish of any kind or species whatsoever." It in no way enlarges the scope of the Department's authority over salmon fisheries, but merely grants to the Department the same powers with regard to other fish as the provisions of the act specifically grant to it with regard to salmon.

In view of the foregoing, therefore, it is my opinion that as salmon do not spawn in Bering Sea, section 6 does not empower the Secretary to prohibit or limit fishing therein, and consequently the Department is without power to limit the size of the mesh of gill nets used in the red salmon fisheries in such sea.

Respectfully submitted,

A. L. Thurman,

Solicitor.

The Secretary of Commerce.

R-Fg
Incl.

Referred to the Bureau of Fisheries,

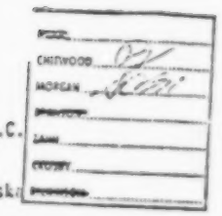
Jan. 8, 1916. E. F. Sweet

Assistant Secretary.

BEST COPY AVAILABLE

600-05

DX ES



1970

Acting Director, BCF, Washington, D.C. November 20, 1969

Regional Director, BCF, Juneau, Alaska

Lack of United States laws or regulations implementing international fisheries agreements

This is in follow-up of my telephone conversation with Bill Terry today regarding the subject.

In late 1964 and early 1965, the United States negotiated agreements concerning king crab fishing in the eastern Bering Sea with Japan and the Soviet Union respectively. These agreements provided that nationals of the respective countries would abide by certain conservation measures including restrictions on types of gear used, minimum size of crabs taken, and retention only of male crabs. The agreements also established a zone north of the Alaska Peninsula in which only pots can be fished. Thus far, regulations of the Alaska Department of Fish and Game have been solely depended upon to implement the provisions of these agreements upon U.S. nationals. The present strike by king crab fishermen here in Alaska has emphasized that continued dependence on State regulations may be inadvisable. A number of non-Alaskan crab fishing boats have apparently signed separate agreements and intend to fish crab while the Alaskan-operated vessels remain on strike. There have been some pressures upon the Governor's office to impose a statewide closure on crab fishing until the Alaskan fishermen can reach settlement. Should this occur, it is possible the non-Alaskan boats and floating processors could fish anyway as long as they operate beyond waters of State jurisdiction, that is beyond the 3-mile limit. Conceivably in such a circumstance, these non-Alaskan boats could fish in complete violation of all provisions of the king crab agreements and would not be subject to regulation by either State or Federal authorities. The same situation, of course, prevails regardless of the current strike assuming the non-Alaskan boat does not enter waters of State jurisdiction which, of course, subjects him to compliance with Alaska regulations.

A somewhat analagous situation exists in the Kodiak Island region. In late 1964 the United States reached an agreement with the Soviet Union under which six areas adjacent to Kodiak Island are closed to fishing with mobile gear during certain periods of the year. This closure, except for small shrimp trawlers and scallopers, applies to nationals of both countries. Heretofore, this has presented no problems since there were

Memorandum, Harry L. Rietze to Acting Director, Bureau of Commercial Fisheries, Washington, D. C., November 20, 1969.

no United States ships with high-seas trawling capabilities in the Alaskan area. With the appearance of the SEAFREEZE PACIFIC in this area, it is possible she could trawl within these zones during the closed period and would be subject to no U.S. laws implementing the gear areas agreement. It could be extremely embarrassing to the United States if the Soviets found the SEAFREEZE PACIFIC trawling in these zones during the closed period and learned that in 5 years the United States has taken no action to implement the agreement.

We have at various times in the past mentioned to Central Office personnel this lack of implementing United States laws. The present situation, however, leads us to believe that additional consideration should be given to the enactment of United States laws implementing these agreements.

(SGD) HARRY L. RIETZE

Harry L. Rietze

cc:
Kirkness
Nakatsu
Branson

RCNaab/cm

DX EX

Office Memorandum • UNITED STATES GOVERNMENT

TO : Administrator, Alaska Commercial Fisheries
Juneau

DATE: November 23, 1955

FROM : Chief, Branch of Alaska Fisheries

SUBJECT: Regulation of salmon fishing on high seas.

The matter of regulating salmon fishing on the high seas adjacent to Alaskan waters in accordance with the authority contained in the Act of August 12, 1954, has been discussed informally with members of the Solicitor's staff.

As a result of these discussions, we believe the objective of prohibiting salmon fishing on the high seas, except by hook and line, can be accomplished by: (1) promulgation of a general regulation describing the waters in which existing regulations are applicable; and (2) promulgation of a regulation prohibiting all salmon fishing by U. S. Nationals in the convention waters off the Alaska coast east of 175 degrees west longitude.

The waters in which existing regulations apply could be described as follows:

> "All waters for a distance 3 miles seaward (1) from the coast and lines extending from headland to headland across . . . all bays, inlets, straits, passes, sounds, and entrances, and (2) from the shores of any island or group of islands, including the islands of the Alexander Archipelago and the waters between such groups of islands and the mainland."

This description, we believe, would include the waters commonly fished in recent years, particularly those in Bristol Bay, that might otherwise be considered high seas. A careful check should be made to be sure other waters fished under existing regulations are not omitted, and, in this connection, we are wondering whether this completely covers the purse seine fishery west of False Pass, and off the west coast of Prince of Wales Island.

The act implementing the North Pacific Fisheries treaty will be cited as authority for prohibiting fishing, except hook and line, by U. S. Nationals on the high seas off the Alaskan coast east of 175 degrees west longitude. The prohibition, we believe, must be limited only to the area within which the Japanese have agreed to abstain from fishing, and only to waters off the Alaskan coast, unless Canada imposes a similar restriction on its nationals. In the event Canada does impose a prohibition on salmon fishing on the high seas not only off British Columbia, but throughout convention waters, as suggested by the U. S. Section of the Commission, we may wish to broaden the regulation to restrain U. S. Nationals in the same manner.

Memorandum, Seton Thompson, Chief, Branch of Alaska Fisheries,
to Administrator, Alaska Commercial Fisheries,
March 23, 1955

Upon receipt of your views on this subject, the matter will be taken up further with the Chairman of the U. S. Section of the Commission, as indicated in the Department's letter of October 10, copy of which was sent to you.

Seton H. Thompson

DX FF

D Ex. 9
8/20/71

Office Memorandum · UNITED STATES GOVERNMENT

TO : Administrator, Alaska Commercial Fisheries
U.S. F.W.S Juneau, Alaska

DATE: March 29, 1957

50/.01

FROM : Assistant Administrator for Staff Coordination
Alaska Commercial Fisheries U.S. FWS Juneau, Alaska

SUBJECT: Report on Attendance at International Conference February 27 and 28, 1957 - Seattle, Washington.

On February 26, I made a trip to Seattle to attend this International Conference, to hold meetings with the operators concerning the Bear River fisheries and the Cook Inlet fisheries, and to confer with Bob Simpson concerning the compilation of statistics and the move of the statistical unit to Juneau. This memo is a report on the International Conference on February 27 and 28.

The meeting was held in Seattle at the laboratory of the Washington State Fisheries Department. I attended as a member of the United States delegation to discuss the control of offshore fishing, primarily salmon net fishing, with representatives of the states of California, Oregon and Washington and the Canadian Government. Those present and subjects under discussion are set forth in the attachments to this memo, some of which are confidential.

At the meeting, the three states and Canada presented charts showing a line beyond which the offshore net fishery would not be allowed to develop. This line, as presented by the states and Canada, had no reference to the three-mile limit, but in many instances almost coincided with the surf lines along the coast of these countries. This indicated that the states and Canada intended to prohibit salmon net fishing in any instances, even in their territorial waters. The line drawn by the Canadians hugged the Vancouver Island shoreline quite closely but was somewhat loosely drawn along the eastern shore of Hecate Streit up to the international boundary line between Canada and Alaska. They had also drawn a fairly tight line around Queen Charlotte Island. In the discussions there was some controversy between the Canadians and the people of Washington State concerning the line drawn across the mouth of the Strait of Juan de Fuca. The Canadians proposed a line from Tatoosh Island to Bonilla Point which line, the Americans thought, would give the Canadians a somewhat greater advantage in fishing the runs headed for the inside waters to the Straits. The people from Washington State wanted the line drawn across the Straits at a position farther inshore. This was finally compromised by accepting the Canadian proposal of a line from Tatoosh Island to Bonilla Point for a period of two years with the understanding that Canada and the State of Washington would conduct further research on the migration and movements of the salmon in this area and, should any inequities appear to arise from the position of the line during this period, Mr. Whitmore of the Canadian Department of Fisheries and the Director of Fisheries of the Washington State

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Exhibit 9 to Deposition of Ronald C. Naab, dated August 20, 1971, described at page 29 of that deposition:

Memorandum, John T. Gharrett, Assistant Administrator for Staff Coordination, Alaska Commercial Fisheries, to Administrator, Alaska Commercial Fisheries, U.S. FWS, Juneau, Alaska
March 29, 1957.

Department of Fisheries would get together to try to adjust the difficulties.

During the discussions, the Canadians evinced particular interest in the laws governing Alaska fisheries in reference to offshore net fishing. They were fully aware of our current regulations prohibiting offshore net fishing beyond the three-mile limit, but were interested in knowing from what base line we determined this three-mile limit. They requested that we draw a line on a chart showing the proposed base line from which the three-mile limit would be measured. It seemed obvious to Mr. Terry and myself that their primary interest was in knowing how we would treat Forrester Island, which is located some distance offshore. Would it be included in the base line as drawn from headlands to islands to headlands and thus permit an offshore purse seine fishery to develop in that area on fish heading through Dixon Entrance and subsequently to Canadian rivers? Also, it appeared that they were interested in knowing how wide a gap between islands and headlands we were prepared to bridge in drawing the base line for determining the three-mile distance offshore. To satisfy them, Mr. Terry and I, on a very small scale chart, drew a rough line from the boundary line at Dixon Entrance northward along the coast as far as Icy Strait. We explained that this was a very rough line subject to approval and redesignation at a later date. We did indicate that Forrester Island would not be included in the base line but would have a separate line drawn around it. The Canadians accepted this with the proviso that, as soon as practicable to us, we furnish them with a chart showing the base line for all of Alaska from which we would determine the three-mile limit as mentioned in our regulation prohibiting offshore salmon net fishing. This we agreed to do.

Other discussions were held concerning the offshore troll fishery, otter trawl fishery and black cod fishery, and the Canadians in general agreed with many of the proposals for regulation which had been developed formerly by the Pacific Marine Fisheries Commission for the coordinated management of these various fisheries.

The conference was concluded on the evening of February 28 and the results are fairly well summarized in the attached newspaper clipping.

John T. Gharrett

JOHN T. GHARRETT

attachments

DX FF A 801-01

Director, Bureau of Commercial Fisheries, FWS, June 11, 1957
Washington, D.C.

Acting Administrator, Alaska Commercial Fisheries, FWS, Juneau, Alaska

Offshore fishing - Alaska

Reference is made to Mr. Pucnale's subject memo of March 22, 1957. Attached under separate cover are overlays of specific navigational charts which delineate our concept of the correct base line from which "waters of Alaska" should be determined.

In studying these proposed base lines the following principles should be considered:

(1) They do not represent the outer limits of territorial waters but are only the base from which outer limits are determined.

(2) We have attempted both to protect existing American offshore net fisheries and to prevent the development of new such fisheries.

(3) Base lines have been drawn to apply primarily to American fishermen and represent our thinking as to how the offshore regulation should complement the management of our Alaskan territorial fisheries.

(4) Although relatively large areas of open water are sometimes encompassed, management of our fishermen can be accomplished under established procedures.

(5) In drawing base lines, interpretation of international waters was not a primary concern.

The overlay process has a tendency to shrink the paper to a minor extent. Therefore, the overlays may not exactly fit the points indicated on corresponding charts as discussed below:

(1) U.S.C.&G.S. 8102 (Dixon Entrance to Cape St. Elias) (January 5, 1946). There may be some question about using the Alaska-Canadian boundary as a southern limit but we feel that it is logical.

(2) U.S.C.&G.S. 8302 (Cape St. Elias to Shumagin Islands) (October 23, 1950). You will note two alternate lines between Cape St. Elias and Kinchinbrook Island. The solid line was our first

Exhibit 9 to Deposition of Ronald C. Naab, dated August 20, 1971 described at page 29 of that deposition:

Memorandum, Howard Baltzo, Acting Administrator, Alaska Commercial Fisheries, to Director, Bureau of Commercial Fisheries, Washington, D. C., June 11, 1957.

estimate but, upon inquiry in the field, it developed that in some years of suitable weather the Copper River gillnetters fish the open ocean beyond the sand bars for as far as ten miles. In view of our adopted principle (2) above, we recommend that the base line follow the dotted one on the overlay.

We have drawn the base line from Chugach Island to Point Banks, and then have included all waters surrounding Kodiak Island and waters of Shelikof Strait. Fishing by our nationals within Cook Inlet and Shelikof Strait can be controlled through regular management procedures.

There is an existing Canadian halibut fishery in Kamishak Bay and various bays along the north side of Shelikof Strait. Our proposal is concerned with management of our salmon net fishery, but the Canadian halibut fishery should probably also be given consideration.

(3) U.S.C.&G.S. 8002 (Alaska Peninsula and Aleutian Islands to Segum Pass) (March 9, 1952). The purse seine fishery in Unimak Bight on the south side of Unimak Island would be contained within a distance of three miles from the base line as we have drawn it. The purse seine fishery off Moor River on the north side of the Peninsula near Port Moller would also be so contained. You will note a double line across Bristol Bay, roughly between Cape Menshikof and Cape Newenham. The dotted line is the present boundary of our Bristol Bay management district. Since our base line represents the boundary from which the outer limit of fishing is measured, the solid base line is set three miles back of the Bristol Bay management line. Only gillnetting is permitted in Bristol Bay and fishing is restricted to specified local areas.

(4) U.S.C.&G.S. 9122 (Amukta Island to Attu Island) (November 19, 1951). This carries our proposed base line only out to 175 degrees west longitude.

(5) U.S.C.&G.S. 9202 (Bering Sea) (September 14, 1953). North of Bristol Bay, limited salmon gillnet fisheries exist within the Kuskokwim and Yukon Rivers. Any other salmon fisheries in the area are negligible and knowledge of salmon runs in the more northern rivers is relatively slight. The base line in this area, as we have drawn it, is designed primarily to prevent any future development of offshore salmon net fisheries.

(6) U.S.C.&G.S. 9400 (Arctic Coast of Alaska) (August 11, 1952). Any existing salmon commercial fisheries are negligible and knowledge as to the potential of this area is limited. We have drawn the base line

across the south of Kotzebue Sound recognizing there may some day develop a salmon or other commercial fishery within the Sound. The rest of the bare around to the Canadian boundary has been drawn to pretty much follow the surf line.

We have not consulted the fishing industry in any respect concerning our proposed line; it incorporates only the thinking of members of our staff. Should you deem it proper, it might be well to discuss the matter at our public fishery hearings this fall to solicit further advice and to publicize what is being done.

C. RICHARD BALTZO

cc: Charrett
Scudder
Lindsley

JTCharrett/CRBaltzo:jh

DX FF 1

Office Memorandum • UNITED STATES GOVERNMENT

TO : Regional Director, Bureau of Commercial Fisheries, Juneau, Alaska

DATE: October 30, 1958

FROM : Chief, Branch of Alaska Fisheries

SUBJECT: Alaska North Pacific offshore fishing boundary

Attached for your information and comment is a copy of a self-explanatory letter from the Canadian Under Secretary of State for External Affairs to the American Minister at Ottawa.

You will note that the Canadian Government is very much interested in discussing early in 1959 the present location of the line beyond which salmon net fishing is prohibited in the North Pacific Ocean off the coast of Alaska. As you know, the United States Government, through this Department, was the first to prohibit salmon net fishing in the North Pacific Ocean. The Department's regulation placed the prohibition against such net fishing at three miles seaward from lines extending from headland to headland along Alaska's coast. Subsequently, a regulation having a similar purpose was adopted by Canada but with a significant difference in approach in that the Canadians prohibited salmon net fishing beyond base lines extending from headland to headland. It is also significant that the Canadians established lines from headland to headland around the Queen Charlotte Island group, thus leaving Hecate Strait as waters of the high seas and closed to salmon net fishing. This action suggests the possibility that we should give similar treatment to the waters between the Alaska Peninsula and the Kodiak Island group. It is understood that the States of Washington, Oregon and California also have prohibited salmon net fishing in Pacific Ocean waters seaward from the line of high tide along the open coast lines of those states.

It is requested that you review the effect on the salmon fisheries in Alaska which would result if an offshore fishing boundary were established similar to that in effect in British Columbia. Since some fish traps to the westward are installed and maintained directly on a headland, it seems clear that a prohibition against the taking of salmon, except by trolling, in waters beyond a line extending from headland to headland, would have the effect of eliminating such traps. Particular attention

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Exhibit 9 to Deposition of Ronald C. Naab, dated August 20, 1971, described at page 30 of that deposition:

Memorandum, John I. Hodges, Chief, Branch of Alaska Fisheries, to Regional Director, Bureau of Commercial Fisheries, October 30, 1958.

should be given to the effect of a change in the location of the Alaska offshore fishing boundary in Southeastern Alaska, since we believe that the Canadians' desire to discuss this matter stems from its concern over the catches of salmon taken by net fishing in the Cape Adulgton area.

John I. Hodges

Attachment

DX FF 3

80-01 FF

Director, BCF, FWS, Washington, D. C. November 3, 1958
Attn.: Chief, Branch of Alaska Fisheries

Regional Director, BCF, FWS, Juneau, Alaska

Alaska North Pacific offshore fishing boundary

Re Mr. Hodges' subject memo of October 30, I have several questions:

1. I was not aware that the Canadian location of its base line stipulated "from headland to headland." May we have a copy of the Canadian regulation?

2. Were the charts mentioned in the letter from the Canadian Under Secretary of State for External Affairs the same as recommended and submitted to Washington by this office, or were there changes made before Washington submitted them to Canada?

3. May we have copies of any correspondence between governments in respect to the above?

4. The charts we submitted to Washington on June 11, 1957, showed a base line from which we proposed the 3-mile limit in Alaska be measured. With the possible exception of our treatment of Kodiak Island, would the line we recommended be considered similar to that line proposed by the Canadians for their present base line?

The review requested by Mr. Hodges' memo will require considerable analysis and will be facilitated by delineation in accordance with the above requested information.

JOHN T. GHARRETT

JTGharrett:jh

Exhibit 9 to Deposition of Ronald C. Naab, dated August 20, 1971, described at page 30 of that deposition:

Memorandum, John T. Gharrett, Regional Director, Bureau of Commercial Fisheries, to Director, Bureau of Commercial Fisheries, Attn: Chief, Branch of Alaska Fisheries, November 3, 1958.

FF-3

DX FF 4

821-01 F.F

Office Memorandum • UNITED STATES GOVERNMENT

TO : Regional Director, Bureau of Commercial Fisheries, Juneau, Alaska

DATE: November 12, 1958

FROM : Chief, Branch of Alaska Fisheries

SUBJECT: Alaska North Pacific Offshore Fishing Boundary

Re your memorandum of November 3, we shall attempt to bring you up-to-date on the above subject and answer the questions you proposed. The numbers used here refer to the paragraph numbers in your memorandum in which you requested specific information.

(1) Attached are three copies of the British Columbia Fisheries Act spelling out in detail the lines they have drawn. Also attached is a Verifax copy of the lines as they appeared in the Western Fisheries journal for March 1957. We regret that copies of this Act were not previously forwarded to you, but it was assumed that you had a working arrangement with British Columbia whereby any such changes in regulations were automatically exchanged at the field level.

(2) The answer to this question is affirmative. The charts and overlays were forwarded to the Canadian Government as submitted by you.

(3) The attached Verifax copy of a letter from Mr. Whitmore dated August 14, 1957, is the only pertinent piece of correspondence which we have located here. We will search further, however, and attempt to obtain copies of correspondence between governments for you.

(4) In our estimation the charts you submitted appear to be comparable, as to base lines, with the Canadian regulations with the exception as you have noted, of your treatment of the Kodiak Island group. We do not, however, suggest that any action be taken concerning the Kodiak Island group prior to the forthcoming meeting with the Canadians.

We do not have copies of the Washington and California regulations with respect to offshore net fishing and you may wish to obtain them directly from those states. Copies of the pertinent sections in the Oregon Code are attached.

Exhibit 9 to Deposition of Ronald C. Naab, dated August 20, 1971, described at page 30 of that deposition:

Memorandum, John I. Hodges, Chief, Branch of Alaska Fisheries, to Regional Director, Bureau of Commercial Fisheries, Juneau, Alaska, November 12, 1958.

FF-4

The fact that the Alaska regulations alone permit net fishing out to the three-mile limit may make our position difficult to maintain in the forthcoming meetings and for that reason we wish to add as much defense material to our position as possible.

I trust that this answers your questions adequately, and will be of help in preparing your review.

John I. Hodges

Attachments

DX FJ 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

18 July 1957

Harley Adams
Coho, Alaska

Dear Mr. Adams:

This is to advise you that you are directed to appear at the Fish and Wildlife Service office in Kenai, Alaska on Monday, July 22, 1957 at 2:00 p.m.

You were previously requested by Charles Wilson to appear there during the fishing closure beginning July 16, 1957 to answer to a charge of violating section 109.12, of the Alaska Commercial Fishery Regulations. Since you apparently did not appear - or left no word of your reason for not making your appearance - this letter is a final warning. Failure to appear, or reply to this letter will result in a warrant for your arrest, served by the U.S. Marshall.

Very truly yours,

CFC:bb

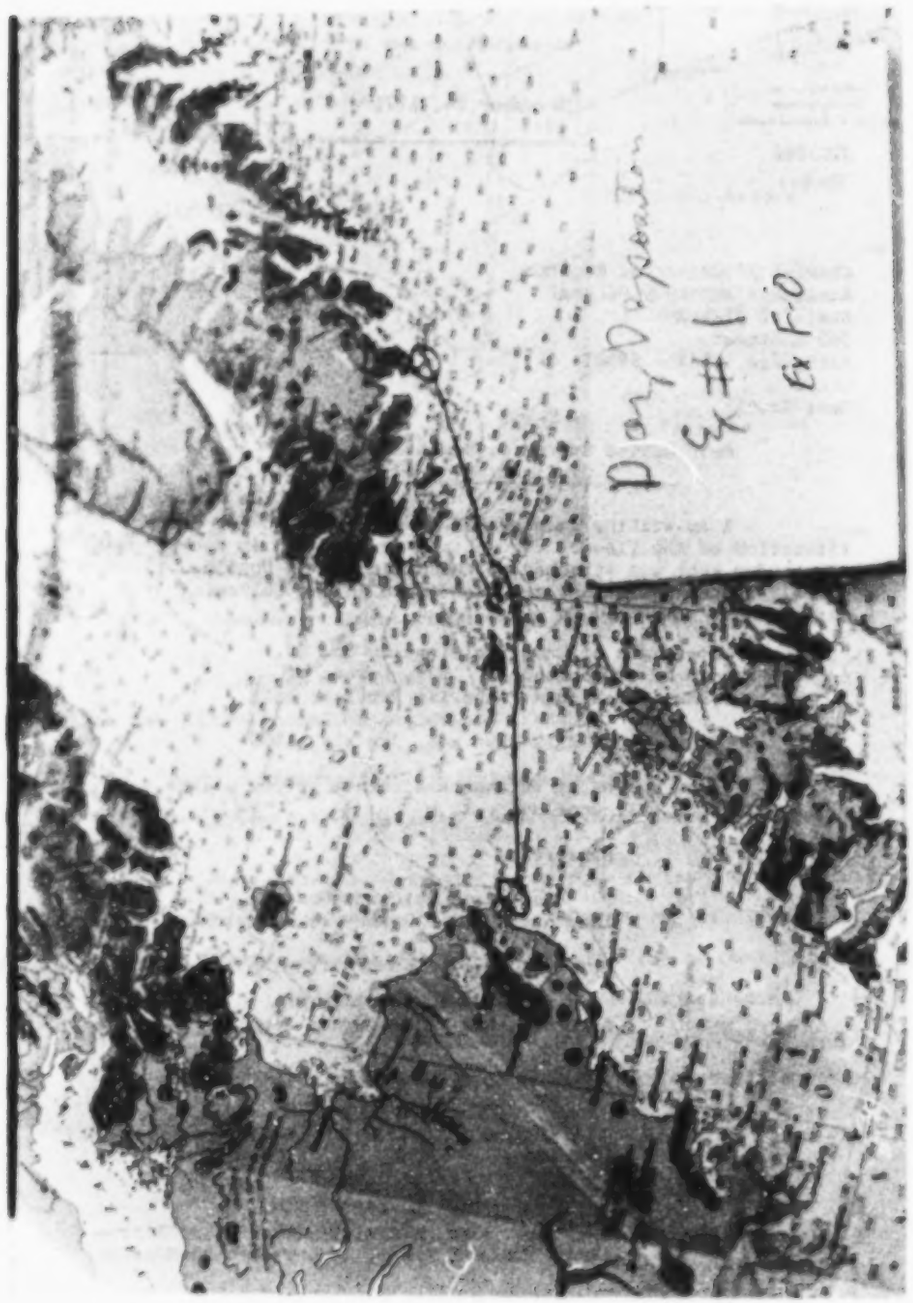
Charles F. Connelley, Jr.
Fishery Management Agent

Dellsel 2
9-10-71
mcl

F-5-1

Exhibit "F-J-1" - Letter to Harley Adams, Coho, Alaska, from Charles F. Connelley, Jr., Fishery Management Agent, U.S. Department of the Interior, Fish and Wildlife Service, dated July 18, 1957 regarding Mr. Adams' violation of Section 109.12 of the Alaska Commercial Fishery Regulations and the request for him to appear at the Fish and Wildlife Service Office in Kenai, Alaska on Monday, July 22, 1957 at 2:00 P.M.

DX FO



BEST COPY AVAILABLE

DX HT

File with U.S. Exhibit Chayes - Meeker letter Copy in our Exhibit Simon Affidavit

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

November 24, 1971

JIC:EFB
90-4-1

RECEIVED
Department of Law
NOV 29 1971
Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Charles K. Cranston, Esquire
Assistant Attorney General
State of Alaska
360 K Street
Anchorage, Alaska 99501

Dear Chuck:

Re: United States v. State of Alaska,
Civil No. A-45-67

I am writing in response to your request for identification of the fishery regulations referred to in the memorandum that was attached to the Affidavit of Donald J. Simon. These regulations are identified in the following manner:

Department of Commerce Circular No. 25, 16th ed., December 19, 1929, Bureau of Fisheries, Alaska Fisheries Service; and

Circular No. 251, 21st ed., Jan. 19, 1935

If we can be of further assistance to you please do not hesitate to call upon us.

Sincerely,

Assistant Attorney General
Land and Natural Resources Division

By: Edward F. Bradley Jr.
Edward F. Bradley, Jr.
Attorney, Marine Resources Section

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff	)	
v.	)	CIVIL NO. A-45-67
STATE OF ALSAKA, Defendant	)	

RECEIVED
Department of Law
NOV 10 1971
Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

A F F I D A V I T

CITY OF WASHINGTON)
) SS:
DISTRICT OF COLUMBIA)

Donald J. Simon, duly sworn, deposes and says:

1. That he is Chief of the Records Services Division of the United States Department of State.

2. That in that capacity he has custody of the Central Foreign Policy files of the U.S. Department of State.

3. Attached to this affidavit is a true and correct copy of the portion of the memorandum dated April 23, 1962, file and document Number 894.245/4-2362 relating to Cook Inlet and the letter dated May 3, 1962, from Abram Chayes, Legal Adviser, to Frank Barry, Solicitor of the Department of the Interior and the letter dated July 3, 1969, from Leonard Meeker,

Affidavit of Donald J. Simon, dated September 30, 1971, with attachment referred to in No. 3 of affidavit.

Legal Adviser, to Shiro Kashiwa, Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

Donald J. Simon
Donald J. Simon
Chief, Records Services Division
U.S. Department of State

Subscribed and sworn to before me
this 30 day of September, 1971

Edith F. McCormack
Notary Public in and for
the District of Columbia

(Seal)

My commission expires September 30, 1975.

Cook Inlet

A letter of April 17, 1962, from Frank J. Barry, Solicitor, Department of the Interior, raises certain questions concerning Cook Inlet in which Alaska intends to offer for sale certain oil and gas leases. The location of the relevant areas is not known. The same research procedure described above in connection with the Shelikof Strait was developed for Cook Inlet which, apparently, Alaska claims as an historic bay. No basis was found to support the Alaskan claim.

1. Cook Inlet. Cook Inlet lies between Cape Elizabeth (Kenai Peninsula) and Cape Douglas (Alaska Peninsula). The two capes are about forty-five miles apart.

2. Absence of claims: State papers. No relevant mention of Cook Inlet has been found in the records of the Department.

3. Department of Commerce fishing regulations. The Cook Inlet fishing regulations contained in the 1929 and 1935 Department of Commerce regulations, applicable to both nationals and aliens, cited above, do not limit fishing beyond a three-mile limit drawn without regard to the historic bay claim, according to Dr. Pearcy who plotted the areas regulated on Coast and Geodetic Survey map 8554 (Cook Inlet - Southern Part), Oct. 16, 1961. It is not known whether regulations issued by the Department of the Interior purport to do so.

4. Treaty of Cession. The Convention ceding Alaska sheds no light upon the status of Cook Inlet. Nor is the Blaine Bering Sea correspondence useful.

5. The Kodiak case. In 1892 the District Court for the District of Alaska held in The Kodiak, 53 Fed.Rep. 126, that the United States could properly assert "territorial jurisdiction" over Cook Inlet. The Kodiak was seized at 59°9'N., 152°41'W. Dr. Pearcy plotted this point on Coast and Geodetic Survey map 8554; using a forty-five mile long line drawn between Capes Elizabeth and Douglas, the Kodiak was seized about ten miles north into the Inlet. It was at least 22.9 miles from the nearest shore.

/The

The decision in The Kodiak rests in part upon the thesis that conservation of the sea otter within a three-mile limit could not be adequately carried out if unrestricted hunting were to take place immediately beyond that limit. It rests further upon a statement by Chancellor Kent that the United States could reasonably exert exclusive control over waters on the near side of a line drawn from the southern cape of Florida to the Mississippi, and other supposed authorities are cited. It suggests that the seizure would not have been undertaken unless the government had asserted "territorial jurisdiction" over the Cook Inlet waters -- an assertion which, having "a political character" is said to be excluded from judicial review.

6. Closing lines. The Department of the Interior has in the past evidently used a ten mile closing line to demarcate that part of Cook Inlet which is internal in character. This line connects the East and West Forelands. If, alternatively, a twenty-four mile closing line is used, Dr. Pearcy indicates that it would cut across the Inlet at Cape Kasilof, Kalgin Island and Harriet Point.

cc: L - Mr. Meeker
L/SFP - Mr. Yingling
L/FE - Mr. Czyzak
RFX/GS - Dr. Pearcy

L:L/UNA:HReis:ml:4/23/62

Orle : Disc. Memorandum Ltr

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,
Plaintiff
v.
STATE OF ALASKA,
Defendant

CIVIL NO. A-45-67

S T I P U L A T I O N

The defendant, State of Alaska, and the plaintiff, United States of America, hereby stipulate for the purposes of the above-entitled litigation that:

1. The United States has produced the affidavits of Horace F. Shamwell and Donald J. Simon, attached hereto as Exhibits A and B.

2. Upon production of the portion of the memorandum identified in paragraph 5 of Mr. Simon's affidavit that relates to Cook Inlet and to the letters identified in his affidavit, the defendant State of Alaska stipulates that it will not require production of any of the materials and documents sought in its motion of June 29, 1971, and August 5, 1971, except that if any documents or files specifically referred to in the portion of the memorandum produced are included within the materials and documents sought in its motions identified above, defendant reserves the

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff v. STATE OF ALASKA, Defendant	)	CIVIL NO. A-45-67

A F F I D A V I T

CITY OF WASHINGTON)
) SS:
DISTRICT OF COLUMBIA)

Horace F. Shamwell, Jr., duly sworn, deposes and says:

1. He is an attorney in the Office of the Legal Adviser of the Department of State and was formerly assigned to the Office of the Assistant Legal Adviser for Ocean Affairs.

2. This office maintains the files of the Office of the Legal Adviser of the Department of State relating to Cook Inlet.

3. The file located in the Office of the Legal Adviser identified in paragraph 4 of the affidavit of July 1971, attached as Exhibit A to the United States Memorandum in Support of Plaintiff's Opposition to Defendant's Motion for Order Compelling Production of Documents for Inspection and Copying (FRCP 37) dated June 18, 1971, as "Cook Inlet, Status of" was formerly identified as "L/SFP Cook Inlet, Status of".

EXHIBIT A

right to seek production of such documents or files to which specific reference is made.

3. The parties furthermore agree that the production of the portion of the document identified in paragraph 5 of Mr. Simon's affidavit does not constitute a waiver of any privilege that the United States may have with respect to the other portion of the document or other documents not yet disclosed. The United States does waive any objection it may have as to the privileged status of the portion of the document disclosed.

Dated this day of October, 1971.

FOR THE STATE OF ALASKA:

John E. Havelock
Attorney General

By _____
Charles K. Cranston
Assistant Attorney General

FOR THE UNITED STATES OF AMERICA:

_____
Jonathan I. Charney
Attorney, Department of Justice

4. None of the files of the Office of the Legal Adviser contain background memoranda or other written material prepared in connection with the research for and drafting of the letter dated May 2, 1962, from Abram Chayes, Legal Adviser, to Frank J. Barry, Solicitor of the Department of the Interior nor for the letter dated July 3, 1969, from Leonard Meeker, Legal Adviser, to Shiro Kashiwa, Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

Horace F. Shamwell, Jr.
Office of the Legal Adviser
Department of State

Subscribed and sworn to before me
this 28th day of September, 1971

Erminia R. Scarrino
Notary Public in and for
the District of Columbia

My commission expires My Commission Expires Sept. 14, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA, Plaintiff	)	
v.	)	CIVIL NO. A-45-67
STATE OF ALASKA, Defendant	)	

AFFIDAVIT

CITY OF WASHINGTON)
)
DISTRICT OF COLUMBIA) SS:

Donald J. Simon, duly sworn, deposes and says:

1. That he is Chief of the Records Services Division of the United States Department of State.

2. That in that capacity he has custody of the Central Foreign Policy files of the U.S. Department of State.

3. That one of his responsibilities in that position is to conduct official searches of the files of the U.S. Department of State for documents on subjects or incidents specified in the request.

4. That he has conducted a search of the files of the Department of State for records of research done in preparation for the letter dated May 3, 1962, from Abram Chayes, Legal Adviser, to Frank Barry, Solicitor of the Department of the Interior and the letter dated July 3, 1969, from Leonard Meeker, Legal Adviser, to Shiro Kashiwa, Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

EXHIBIT B

569-731 O - 75 - 29

5. The only record of the research relating to these letters is a memorandum dated April 23, 1962, file and document number 894.245/4-2362.

6. The memorandum consists of two parts with only the latter part relating to Cook Inlet and the above identified letters.

Donald J. Simon
Chief, Records Services Division
U.S. Department of State

Subscribed and sworn to before me
this 30 day of September, 1971

Robert F. McDermott
Notary Public in and for
the District of Columbia

My commission expires September 30, 1971.

DX HT 1

Records of waters of Cook Inlet off the coast of Alaska

INCO-Fish/US - Fish and Fish industry for U.S.
POL 33-1/US - Waters and boundary waters for U.S.
POL 33-4/US - Territorial waters of U.S.
POL 33-6/US - High seas off U.S.
711.022 - Territory, including territorial waters of US.
711h.022 - Territory, including territorial waters of Alaska
811.245 - Fisheries for United States
811h.245 - Fisheries for Alaska
611.11h46 - Fisheries treaties and agreements between the U.S. and Alaska
611.11h461 - Fisheries Commissions between the U.S. and Alaska
811.014 - Territory of U.S.
611.628 - Fisheries U.S.

Office Lot Files for the following:

U/FW - Special Assistant for Fisheries and Wildlife
IR - International Resources Division
L/E - Assistant Legal Advisor for Economic Affairs
ER - Economic Resources Division.
ITR/IRD - International Resources Division
S/FW-COA - Special Assistant to the Secretary for Fisheries and Wildlife

Pltf's Ex 3 for id (Clerk)
6/3/71 bls

Exhibit "H-T-1" - Exhibit 3 to Donald J. Simon's Deposition - Records of waters of Cook Inlet off the coast of Alaska.

DX HX

AD HOC COMMITTEE ON DEMARCATION OF UNITED STATES BOUNDARIES

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MINUTES OF JUNE 1, 1970, MEETING

PARTICIPANTS:

Department of State:	Dr. Robert D. Hodgson (Geographer) Horace F. Shamwell (Legal Adviser's Office Chairman) LCDR Karl Wm. Kieninger (SFW)
ESSA:	Adm. H. D. Nygren Douglas C. Dodge
Department of the Interior:	Francis A. Cotter
C&GS/ESSA:	J. F. Richardson Capt. J. O. Boyer
Department of Justice:	Jonathan I. Charney Bruce C. Rashkow
Coast Guard (DOT):	Rear Admiral W. L. Morrison Lt. Michael Reed

It was decided that at the next meeting ESSA would submit latest charts of entire Gulf of Mexico (Key West to Mexican border) and that Coast Guard would supply to Dr. Hodgson its charts of areas in which closing lines had originally been drawn for this region.

The group agreed to engage in a trial run of reviewing the existing charts using the Gulf of Mexico as the initial example.

Dr. Hodgson indicated that he had original charts of Alaska, done before the asterisk problem was discovered, and was prepared to review them.

Mondays at 2:30 p.m. was decided upon as the regular meeting time.

Defendant's Exhibit 6 to Deposition of Robert Hodgson dated December 9, 1971: Minutes of Ad Hoc Committee on Demarcation of United States Boundaries, June 1, 1970 through January 4, 1971.

AD HOC COMMITTEE ON DEMARCATION OF UNITED STATES BOUNDARIES

MINUTES OF JUNE 8, 1970, MEETING AT 10:30 A.M.

PARTICIPANTS:

Department of State:	Dr. Robert D. Hodgson (Geographer) 101-22022 Horace F. Shamwell (Legal Adviser's Office) LCDR Karl Wm. Kieninger (SFW)
ESSA:	H. J. Dolan 146-8066 Ted Smolker
ESSA/C&GS:	Capt. J. O. Boyer 146-8741 J. F. Richardson
Coast Guard:	Lt. M. W. Reed 118-67070 Capt. G. H. Patrick Bursley
Department of Justice:	Jonathan I. Charney
Department of Commerce:	R. B. Ellert

This was the second informal meeting of the Committee which as yet has not been formally organized under the Law of the Sea Task Force. All the agencies presently represented on the Committee were present at the meeting. The Chairman, Mr. Shamwell, commented to the group that he had not yet seen the reply letter from the Secretary of Commerce approving the Secretary of State's establishment of the committee under the Law of the Sea Task Force. He expressed the hope that this letter would be forthcoming in the near future so that the committee's work would proceed on a formal basis.

The representatives of ESSA expressed concern that the committee's functions were not consistent with the statutory authorities of the various agencies represented. In particular, they expressed concern that the committee would assume the cartographic functions of ESSA with respect to the drawing of U. S. baselines. The representative of the Department of Justice indicated that it was his understanding (and this understanding was confirmed by other members of the committee) that the Ad Hoc Committee would take up where the drawing of baselines had been left off when certain discrepancies were discovered in the interpretation

of ESSA's symbols, i.e., would consider the documents drafted by the Department of State's Geographer, Dr. Hodgson, and correct any interpretation or errors that were present on those documents. The ESSA representatives opted in favor of ESSA doing the charting on the latest ESSA charts and presenting these representations to the Ad Hoc Committee for comment. The representative of the Department of Justice indicated that this would necessitate a great deal of time that was not available in light of the present needs of reporting at least tentative U. S. baselines that could be used in pending domestic litigation and with respect to problems existing in the international sphere.

It was finally agreed that the committee begin its work using Dr. Hodgson's charts, some of which are several years out of date, and present its results to ESSA for recharting on its latest charts. These documents would then be presented to the committee for review and any additional comments which the committee deemed it necessary to make.

The first task taken up by the committee was a review of the Gulf of Mexico baselines. This review was initiated at the present meeting and will be continued at the next regular weekly meeting.

The Chairman of the committee introduced a request from Mr. Stevenson's office that the committee interrupt its present schedule and take up the question of Alaskan baselines in light of a request from Senator Stevens' office for an opinion on the effect of the President's seabed decision on the Alaskan continental shelf. The committee agreed that this request would be honored. The meeting was then adjourned.

AD HOC COMMITTEE ON DELIMITATION
OF UNITED STATES CONTINENTAL

MINUTES OF JULY 17, 1970, MEETING

PARTICIPANTS:

Department of State:	Horace F. Shamwell, Jr. Robert D. Hodgson
Department of Justice:	George S. Swarth Jonathan I. Charney
Department of Interior:	Francis A. Cotter
Department of Commerce (NOAA):	Adm. H. D. Nygren
ESSA:	H. J. Dolan

The Committee met on July 17, 1970, at 1:30 p.m. in the Office of the Geographer of the Department of State, Dr. Robert Hodgson. The Committee first reviewed what had been accomplished at the previous meeting in going over charts of the coastline of Alaska. Specifically, on chart number 8102, United States territorial sea limits have been represented up to the equidistance line on the southeastern boundary between Alaska and British Columbia in the area of the Dixon entrance, including high seas enclaves. On chart number 8152 it was decided to use Wolk Point, which is at the tip of an island close to the shore, as the headland for the closing line of the bay in Wolk Harbor.

At the current meeting, discussion began with chart number 8152, which illustrates the area of Dixon entrance to Chatham Strait. In the area of Coronation Island, the line between Alikula Bay and Egg Harbor has been taken out. At Roller Bay no closing line was to be shown because no closing line that affects the three mile limit would meet the 45° test of measuring the angle between the proposed closing line and the next possible headland.

There was discussion among the group about that formulation that under the headland theory a point should be selected only where the angle between the closing line determined thereby and a line connecting it with the next available headland within the bay forms an angle of 45° or greater. The rationale behind this rule of thumb is that a closing line should be drawn between points where the coast tends to face more

into the bay than the open sea. The Committee agreed to apply this formula where reasonable, realizing that it has no precedent either under domestic law or international law. It was recognized that while there is no such specific formulation under domestic or international law, some standard has to be used in conducting the Committee's work and this one appears to be reasonable and logical in the absence of any other. It was decided, however, that each particular case would be decided on its own merits, and where the 45° angle test would provi unreasonable results, it would not be used. An appropriate notation o the reasons for or against applying the rule will be noted in the min

The following other charts were reviewed and it was decided th there would be no changes in the existing markings made by Dr. Hodgson: Nos. 9450, 9452, 9453, 9455, 9461 and 9463. On chart number 9467, representing Pegik Bay, a juridical bay, it was determined that Pegik Point is a headland and that the closing line would be drawn between the islands in front of the bay.

In addition, charts Nos. 9471 and 9476, were reviewed, and it was determined that they should not be changed.

Mr. Burdick Brittin, Deputy Special Assistant to the Secretary of State for Fisheries and Wildlife, joined the meeting after it had commenced and pointed out certain considerations which he felt the group should make in attempting to formulate even a provisional United States position on baselines. He took issue with the position that it would be easier to correct a territorial limit determination by extending it based on newly discovered evidence rather than to draw back from a line determined upon incorrect or incomplete data. He further pointed out that although he saw no difficulties under domestic law to the approach envisioned, he did see problems in the international area. Specifically, he pointed out that the United States is a party to several international agreements which specify areas in which foreign governments may conduct fishing activities and that these areas which are described are within the contiguous zone. He pointed out that if, as a result of the Committee's work, a conclusion were reached as to the extent of the United States contiguous zone which did not coincide with the descriptions contained in such international agreements, the United States would be placed in a compromising situation.

Mr. Charney of the Justice Department expressed the opinion that if it were discovered that the contiguous zone did not extend as far out to sea as described in such agreements, there would be no problem since the United States would be bound to recognize the foregin rights in the areas as described in the agreement. Mr. Brittin explained, however, that if this were the case, we would be concerned with the

high seas and not areas under our jurisdiction. Mr. Charney pointed out that they would have these rights in the high seas anyway. Mr. Brittin continued that if the Committee would arrive at such conclusions, arrangements would have to be made for amending these international agreements. The Chairman commented that the results of the Committee's work may only be provisional and that this may not form the basis for proceeding to amend on a long-term basis existing international agreements.

Mr. Brittin further questioned whether there was really such an urgent need for the compiling of such material at this time, in light of the long time which had elapsed under existing conditions. All the members of the group agreed that the Coast Guard had expressed a rather pressing need for information useful in the conduct of enforcement activities and that perhaps it would be helpful if the Coast Guard specified just what its most immediate needs were. As no representative of the Coast Guard was present, this problem could not be resolved at the time.

The Chairman indicated that he had drafted papers setting up the Committee on a formal basis, including the description of the Committee's purposes and limitations. He requested each member to review these papers and to submit comments before the next meeting which was set for July 27, at 1:30 p.m. in Dr. Hodgson's office.

At this point the meeting was adjourned.

AD HOC COMMITTEE ON BOUNDARIES
OF UNITED STATES COASTLINE

MINUTES OF JULY 27, 1970, MEETING

PARTICIPANTS:

Department of Justice:	George S. Swarth Jonathan I. Charney
ESSA:	Lt. John K. Callahan, Jr. Douglas Dodge Rear Adm. Harley D. Nygren
Department of State:	Horace F. Shamwell, Jr. Robert D. Hodgson William L. Sullivan, Jr.
Coast Guard:	Lt. Michael Reed
Department of Interior:	Francis A. Cotter

The Committee met in Dr. Hodgson's office at 1:30 p.m. on Monday, July 27, 1970.

Mr. Shamwell asked if there were any substantive comments on his draft memoranda, distributed at the last meeting, regarding organization of the Committee. None were offered, and Mr. Shamwell undertook to revise the drafts in light of other comments submitted, and to distribute the revision at the next meeting.

Dr. Hodgson distributed copies of his letter of July 22 to Admiral Nygren, transmitting copies of the following C&GS Charts, with lines drawn thereon as agreed at the last meeting:

8102	9458
8152	9459
9450	9460
9452	9461
9453	9463
9455	9467
9456	9471
9457	9476

The letter requested transmittal of the charts to the Coast Survey for final operations, and referred to three problems remaining for future Committee consideration: (1) designation of the documents as "provisional"

-2-

or the like, (2) disclaimer with respect to international boundaries, and (3) arrangements for checking overlap on adjacent sheets.

Lieutenant Reed brought to the Committee's attention a request made by the U.S.S.R. in relation to the recent boarding of a Russian ship found within three miles of Redding Rock, off the California coast. The request was for identification of the baselines claimed by the United States in the Pacific between latitudes 34° N and 40° N. It was agreed that the best response at this time would be to say that we use the published C&GS charts and the principles of the Convention on the Territorial Sea and the Contiguous Zone.

The Committee then proceeded to consideration of charts of the north coast of Alaska, as follows:

1. No. 9478. It was agreed that the closing line of Demarcation Bay should run, on the west, to the long coastal island that is crossed by a direct headland-to-headland line; from that island, it should run by the shortest line to the original western headland. West of that line, the waters between the island and the mainland will be territorial sea. Approved.

2. No. 9477. Humphrey Bay will be crossed by a line between the headlands as proposed. The line closing the entrance to the Agnun Lagoon will be pulled back, so as to run to and from the ends of the long island that screens the mouth, slightly landward of a direct closing line between the mainland headlands. The islands occupy more than 70% of the width of the entrance, and are considered screening islands; the waters outside them are not enclosed waters in any realistic sense. Approved.

3. No. 9475. From Kangigivik Point a closing line will be run to a point on the coast at about 145° 08' 50" W. There is no other potential closing point farther east that meets the 45° test. (That is, no point such that a line between the two potential points makes an angle of 45° or more with a closing line drawn from the outer point to the opposite headland.) Approved.

4. No. 9474. No change. Approved.

5. No. 9473. Admiral Nygren pointed out that two "Survey Targets" in Newport Entrance are actually on small islands, though this cannot be ascertained from the chart. The same was true of a "Survey Target" on No.

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9h74. The fact will be noted, but the points will not be used unless the charts are revised to show that these are islands. Approved.

6. No. 9h77. The western headland of Prudhoe Bay will be moved back to a major turn in the trend of the coast, at about 70° 21' 42" N. Approved.

7. No. 9h70. Approved.

8. No. 9h69. From Atigaru Point a closing line will be drawn south to the shore at about 150° 34' W. Approved.

9. No. 9h69).
) C&GS will check the survey sheets to see if
No. 9h68) the indentation between Atigaru Point and Cape Halkett meets the semicircle test. In doing so, the Ekpru River south should be closed off by a line running SE from Nakluina Point. At the next meeting, C&GS will report the results of its planimetry of the area, and will bring the survey sheets to show the area measured.

10. No. 9h66. Cape Simpson is to be used as the western headland of Smith Bay. The published charts do not show enough of the coast to take sure where the eastern headland should be; C&GS will look at the survey sheets and report whether the headland should be at Drew Point or farther south.

11. No. 9h65. Deane Inlet will be closed by a line from Christie Point on the west, to Sanigorook Island, and along the island screen to Kulgurak Island, which is essentially part of the mainland, and so is used as the eastern headland. Approved.

12. No. 9h64. Approved.

13. No. 9h62. The Seahorse Islands will be treated as a single island, intersected by a headland-to-headland line. The line closing Pearl Bay is drawn from Point Franklin on the west to the NE extremity of the Seahorse Islands to the small island just west of the tip of the peninsula forming the eastern headland. The island is treated as substantially part of the peninsula. Approved.

14. No. 9h61. The lines will be corrected to ignore a rock near the shore which is not known to be above mean low water. Approved.

15. No. 9h61. The lines will be corrected to ignore rocks off Kitiahlik Point which are not known to be above mean low water. Approved.

This completed the north coast of Alaska. It was agreed to take up the west coast (California, Oregon, Washington) at the next meeting, as the Coast Guard has its more pressing problems there and those charts are small scale and can be dealt with rather quickly. The rest of the Alaska coast will be dealt with thereafter.

The next meeting was scheduled for 10:30 a.m. on August 3, in Dr. Hodgson's office.

AD HOC COMMITTEE ON DELINEATION
OF UNITED STATES COASTLINE

MINUTES OF AUGUST 3, 1970, MEETING

PARTICIPANTS:

ESSA:	Lt. John Callahan Douglas C. Dodge
Department of Justice:	Jonathan I. Charney George S. Swarth
Department of State:	Robert D. Hodgson Horace F. Sharswell, Jr.
Department of Interior:	Francis A. Cotter
Coast Guard:	Lt. Michael Reed

Two determinations had been postponed from the previous meeting concerning the north coast of Alaska. ESSA representatives had been asked at the previous meeting to calculate the area within Harrison Bay, the westernmost portion of which did not appear on Coast and Geodetic Survey charts 9468 and 9469. It was determined that the total area of the bay is 124.8 square nautical miles. One hundred twenty-seven (127) nautical miles are needed to meet the semicircular test using the headlands chosen. It was decided that no other appropriate headlands would enclose an area meeting the semicircle test and Harrison Bay was thus determined not to be a juridical bay.

Smith Bay was determined to be a legal bay but a difficulty arose in choosing headlands because there is no large scale chart of the inner bay. A best estimate of appropriate headlands was made on Coast and Geodetic Survey chart 9466, third edition 1968, showing the entrance to Smith Bay, and the group agreed upon Drew Point. This completed work on the north coast of Alaska.

Charts of the Pacific Coast (California, Oregon and Washington) were reviewed with the understanding that: (1) no bays would be closed unless the outer limit of the territorial sea were affected by the closing (3) no asterisk would be used as a baseline point and (3) no pier or breakwater would be used unless it were part of a permanent harbor work. Charts 5101, 5202 and 5302 had no closed bays or other

unusual features. Chart 5402 included closing lines across Monterey Bay and San Francisco Bay (Pt. Bonita to Pt. Lobos), but there was no disagreement as to the choice of headlands and no changes were made. Bodega Bay was closed on No. 5502. After some discussion of configuration of the water area of the Bay, the line was approved by the group.

Rocks in the area of Blunts Reef (off Cape Mendocino, chart 5602) raised a question because their names appear in vertical type, which is generally used to designate islands. However, they are here designated by asterisks and listed as rocks awash in the Coast Pilot so were not used as baseline points. Charts 5702 and 5802 presented no questions and were approved. The Columbia River breakwater appears on charts 5902 and 6002 but does not match up on overlay. The breakwater extends further seaward on chart 5902 but 6002 will be used because it is a more recent chart (1968 vis 1967).

A closing line was drawn across Willapa Bay from Leadbetter Point to Cape Shoalwater on chart 6002. Grays Harbor was also closed by lines drawn from its breakwaters. Chart 6102 had no closed bays or other issues of concern.

A number of charts of the Gulf Coast of Florida were reviewed to get the group's opinion of a number of principles used on them. Dark black stipple was used as a proper baseline around Dry Tortuga, Chart 1351 and on chart 1254 (where it appeared as the fourth gradation of black stipple when working from the sea landward and did not contain depth soundings).

A number of islands off the coast of Florida have been created by dumping spoil. Since only naturally formed islands have territorial seas there is a question as to whether these islands may become naturally formed over time. It was decided that those marked as spoil, or which are obviously so because of location or description, will not be used. If it is not reasonable to assume by looking at the chart that an island has been created by spoil, it will be used.

The next meeting was scheduled for 1:30, Monday, August 10, in Dr. Hodgson's office.

AD HOC COMMITTEE ON [illegible]
OF UNITED S[illegible] CONF[illegible]

MINUTES OF AUGUST 10, 1970 MEETING

PARTICIPANTS:

Department of State:	Horace F. Shumwell, Jr. Robert D. Hodgson
Coast Guard:	Lt. Michael Reed
Department of Interior:	Francis A. Cotter
Department of Justice:	Jonathan I. Charney George S. Swarth
ESSA:	Lt. John K. Callahan Hugh Dolan

The meeting was convened at 1:30 p.m. in Dr. Hodgson's office. Lt. John Callahan showed the committee one chart on which the U.S.C. and G.S. had inked the three and twelve mile lines that the committee had approved. He stated that the work was done with a point of size .010" of thickness. He noted that the ink would run if a thicker point was used. It was explained that the U.S.C. and G.S. has inked the first part of the charts, those that will not be used, with a .010" point. The ensuing discussion revolved around the questions of how accurate the line had to be and how distinguishable it should be from other markings on the charts. Lt. Reed stated that the thickness of .040" would be best for the Coast Guard purposes. The committee decided that a .010" point would be preferable for this provisional set but that in the ultimate official set it would have a thinner line, perhaps highlighted in color.

Dr. Hodgson agreed to review the inked charts that Lt. Callahan had brought to make sure that the inking was done correctly.

Lt. Callahan asked that a set of rules be devised, embodying the principles upon which the committee has been proceeding, so that if the person doing the inking should find some small omission in an arc, he could reconstruct it without having to go back to the committee for further instructions. It was agreed that this was a good idea and would be done.

The Chairman questioned the committee members with respect to absences from town or unavailability in the coming weeks. Dr. Hodgson indicated that he would be away on August 24. The committee decided that a meeting would nevertheless be held on that date, at which time the question of disclaimer language and other procedural matters could be taken up. The committee then began to review the following charts that Dr. Hodgson had prepared:

1. No. 1250. Sebrero Key was not used because the lighthouse records indicate that it is not a low-tide elevation despite the fact that the name is in vertical type. Approved.

2. No. 1251. Approved.

3. No. 1252 (5th ed., Dec. 4, 1967). This document had already been corrected to eliminate asterisks and low-tide elevations not within three miles of the low-water line of a high-tide elevation. Approved.

4. No. 1255. It was decided to draw no closing line for Pine Island Sound as it would not affect the three-mile limit. Approved.

5. No. 1257. Dr. Hodgson pointed out that the light green area near North Point was used despite the possibility that it is an error due to the fact that it lacks a dotted border. He stated that the coloring looks too neat to be a mistake. Approved.

6. No. 1261. Approved.

7. No. 1262. Approved.

8. No. 1264. Dr. Hodgson had eliminated the closing line from Crooked Island to Lands End because its angle seemed to have no relation to the bay it was supposed to enclose. A closing line was drawn from the peninsula that is approximately 1 1/4 miles south of Fox Rise to the tip of Lands End and then from the other end of the island on which Lands End is found to the mainland between the tips of the jetties. Approved.

9. No. 1264. Approved.

10. No. 1265. Approved.

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11. No. 1266. A closing line for Mobile Bay was added using Big and Little Dauphin Islands as screening islands between the headlands at Mobile Point and Cedar Point. Approved.

12. No. 1267. High Seas enclaves are designated in Mississippi Sound. Approved.

13. No. 1268. The closing line in front of Lake Borgne was discussed. It was decided that the limit of the mainland in this area was the western side of Grand Pass. A closing line was then drawn from the end of the mainland at Grand Pass to Henderson Point. Approved.

14. No. 1270. A closing line from Point Lydia to the Northern tip of Main Pass was drawn between the natural entrance points at Chicat Island and Breton Island. Approved.

15. No. 1271. This chart will not be used because the line that was drawn on Chart No. 1270 makes all of the water in No. 1271 inland waters.

16. No. 1272. A closing line from North Pass to Dead Women Pass was added as well as one for Garden Island Bay. Approval of this chart was deferred because a new edition is expected very soon.

The next meeting was set for 1:30 p.m., August 17, to continue with the Gulf Coast and possibly the remaining area of Alaska.

The meeting adjourned at 4:00 p.m.

[illegible] OF THE UNITED STATES
[illegible] DELIMITATION

MINUTES OF AUGUST 17, 1970 MEETING

PARTICIPANTS:

Coast Guard:	Lt. Michael Reed
Department of Interior:	Denton R. Moore Francis A. Cotter
Department of Justice:	Jonathan I. Charney George S. Swarth
ESSA:	Hugh Dolan Cdr. R. N. Buffington
CGGS:	J. F. Richardson
Department of State:	Dr. Robert D. Hodgson Horace F. Shatwell, Jr.

The meeting was held in Dr. Hodgson's office at 1:30 p.m. Mr. Richardson presented the group with an example of the use of red ink in drawing the .040" width line that the committee had decided upon at the last meeting for indicating the 3 and 12 mile lines. He indicated that such a red line would appear more vividly on the documents than the black line, but when reproduced on smaller scale documents and photographed in black and white would make little difference. After some discussion the group decided to continue use of the black lines in a width of .040".

Dr. Hodgson reported to the group that there would be no new Chart No. 1272 available within the next few weeks as originally predicted. As a result it was decided to begin to work with the available Chart No. 1272. Dr. Hodgson indicated that the closing line in East Bay had been removed because it does not affect the extent of the territorial sea or the contiguous zone. This decision is in line with the committee's decision of not drawing closing lines where they do not affect the extent of United States off-shore jurisdictional limits. It was brought out that an area designated as "spoil" on the available Chart No. 1272 which was indicated actually does not exist at all. This fact is borne out by more recent surveys. It was decided to table examination of this chart until a later time when a newer edition would be available.

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Cdr. Huffington again raised the question of the committee's supplying to Coast Survey drafters a list of voting principles employed by the group in deciding where to draw the pencil area on charts submitted to [illegible] for smoothing so that those drafters may have some guidelines to use in the future when actual drafting tasks are forwarded to them. The Chairman indicated that this question had come up at the last meeting and that the committee had decided to draw up such a set of principles. He asked for volunteers to perform this task and, there being none, offered to do the same himself.

The following charts were then taken up by the committee seriatim:

1. No. 1273. This chart had been temporarily misplaced, but Dr. Hodgson indicated that it had not been sent forward to [illegible] for inking. Consideration of this chart was then postponed.

2. No. 1274. In this area, which covers Timbalier and Terrebonne Bays, it was decided that a closing line following the string of separating islands reaching across the bay areas should be drawn. Approved.

3. No. 1275. No closing lines were drawn in this area, the decision previously having been made by the State Department that Calliou Bay is neither a historic nor a juridical bay. There was no objection to this conclusion. Approved.

4. No. 1276. A closing line was drawn across East Cote Blanche Bay to Atchafalaya Bay, from South Point on March Island to Point Au Fer on Point Pointaufer Island. Approved.

5. No. 1277. Approved.

6. No. 1278. Approved.

7. No. 1279. Approved.

8. No. 1280. Approved.

9. No. 1282. In this area, including Galveston Bay and its approaches, a closing line was drawn across the Bay to Bolivar Peninsula. High seas enclaves were eliminated. Approved.

10. No. 1283. Approved.

11. No. 1284. The group engaged in a somewhat detailed discussion of the status of Matagorda Island off the coast of Texas in the area of San Antonio Bay. Dr. Hodgson contended that he had always regarded this so-called "island" as part of the mainland in light of characteristics which connect it to the mainland. Discussion of this point was centered about the question of whether there are high seas enclaves in the area between San Antonio Bay and Matagorda Island. It was decided that a closing line should be drawn between Pescu Point on Matagorda Peninsula to the Headland on Matagorda Island. Approved.

12. No. 1285. Approved.

13. No. 1286. The problem of the disparity between the length of the breakwater indicated on earlier charts and that indicated on the later charts was discussed. It was decided to use the information on the most recent charts. Approved.

14. No. 1287. After some discussion it was decided that the stretch of land comprising Padre Island and Mustang Island for all practical purposes should be regarded as mainland. This decision was made in light of the integral connection that this area of land has with the mainland and the fact that at this point it is actually connected with the mainland. As a result of the decision to consider these islands as part of the mainland, no high seas enclaves will be indicated in Laguna Madre. Approved.

15. No. 1288. Approved.

Dr. Hodgson raised the question of the validity of using a method to establish an "equidistance line" by measuring larger and larger arcs along the coastline following the sinuosities of the coast for the purpose of delimiting offshore boundaries between two adjacent states. This method was contrasted with the internationally accepted method of delimiting an equidistance line by constructing a perpendicular bisector to the line closing off the mouth of a river which, for example, represents the international boundary between the two states. He pointed out that

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this question had arisen because it had been discussed, during the course of the present meeting, that the International Boundary Commission had decided upon the method in question as the means for delimiting the United States-Mexican boundary at the point where the Rio Grande River empties into the Gulf of Mexico. This line will eventually be formalized as a treaty line.

Dr. Hodgson indicated that the only place that he had ever seen this method discussed was in Volume 1 of Shalowitz's Treatise and that it would only have logical application where a particular coastline is very straight and regular. Otherwise, it could result in a disparate allocation of jurisdictional areas as a result of the coastline taking a sharp turn in one direction or another. He indicated that he would soon have to render an opinion as to whether or not this method should be employed.

The committee reached no consensus as to whether or not this method should be used in this case or other cases. Mr. Moore of the Interior Department raised the issue of the effect of using this particular method on delimitations in other areas in which the United States has a significant interest. Dr. Hodgson and Mr. Shewell were of the opinion that the use of a particular method in delimiting one boundary would not necessarily prejudice the United States in agreeing on a delimitation in another area. It was considered important, however, to come to some conclusion as to the wisdom of using this particular method in the Rio Grande area, even though its use would appear to benefit the United States out to the 12-mile limit. The group had no further suggestions to make on the subject and discussion of the matter was terminated.

In connection with the United States-Mexico boundary, Lt. Reed of the Coast Guard indicated a need for provisional boundary lines for fishery enforcement purposes. Dr. Hodgson informed the group that the International Boundary Commission had decided upon a provisional international boundary line for fishery purposes and the group decided that this line should be furnished for the Coast Guard's use and indicated as such a provisional line on the working documents.

At this point the meeting was concluded and it was decided to meet again on August 24, 1970, at 1:30 p.m. in Dr. Hodgson's office. A primary purpose of this meeting would be to discuss the relevant disclaimer language to appear on documents reviewed by the group.

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misinterpretation. Also, a statement was included so as to make it clear that the Coast and Geodetic Survey nautical chart was used as a base chart only.

3. limited use - The Committee decided to omit any statement of limited use as it is contemplated by certain members of the Committee that these documents can be used for purposes other than law enforcement. When the question arose as to the use of these documents for purposes other than law enforcement, particularly in view of the accuracy of the documents, the Committee felt the word "provisional" and the statement of possible revision would suffice to permit future development of a more accurate document.

4. use in navigation - Due to the inaccuracies resulting from a reduction in scale and because no arrangements have as yet been made to keep the documents abreast of the latest marine information, such as "Notice to Mariners," it was decided to include in the disclaimer a statement warning against use of these documents for navigation.

The meeting was adjourned at 3:30 p.m., and the next meeting was set for 1:30 p.m., August 31, 1970, in Dr. Hodgson's office.

AD [illegible]
C. [illegible]

MINUTES OF AUGUST 24, 1970 MEETING

PARTICIPANTS:

Department of State:	Horace F. Shamwell, Jr.
Coast Guard:	Lt. Michael Reed
Department of Justice:	Jonathan J. Charney
Department of Interior:	Denton R. Moore
Department of Commerce:	Douglas Hodgson James F. Richardson Lt. John K. Callahan, Jr.

The Committee met in Dr. Hodgson's office at 1:30 p.m. Mr. Shamwell had to leave the meeting shortly after it commenced. Due to the absence of Dr. Hodgson no charts were reviewed. Mr. Richardson delivered to the Committee the first series of documents inked by the Coast and Geodetic Survey. They were as follows: Nos. 5202, 5402, 5502, 5602, 5802, 5902, 6002, 6102. Five documents on which the Coast Survey had found questionable areas were appropriately marked.

Mr. Shamwell asked for proposed disclaimers, and three were submitted: one each from the Department of Justice, Coast Guard, and Department of Commerce (see attachment A). The Department of Justice draft was used as a base, and the final product is attached (see attachment B).

Discussions were held relevant to the formation of the disclaimer and centered on the following points:

1. internal waters - after some discussion it was determined that the term "inland waters" should be included in the disclaimer since in particular areas, such as bays, lines were drawn by the Committee which delineate inland waters. However, the delineation of inland waters is made in certain areas only and no attempt has been made to define all inland waters on the charts.

2. charts - the question arose as to whether or not "chart" was the correct term to describe the final product of the Committee. After a good deal of discussion the term "chart" was replaced with the term "document" so as to avoid any

ATTACHMENT A

Proposed Disclaimers

Commerce:

This is a provisional delineation of the three and twelve mile seaward boundaries of the coastal United States drawn on a Coast and Geodetic Survey nautical chart. These boundary lines have been drawn and approved by the ad-hoc inter-agency boundary committee and are subject to revision whenever pertinent information becomes available. This delineation is intended for limited use primarily in law enforcement programs.

Justice:

The lines drawn on this chart to delimit the internal waters, territorial sea, and contiguous fishery zone of the United States have been prepared by an interdepartmental committee and represent its interpretation of relevant legal principles as applied to the geographical information shown on the chart. They are subject to revision whenever that is required by application or correction of the information shown on the chart or by re-interpretation of the legal principles involved. The outer limits of the territorial sea and contiguous zone terminate wherever they intersect an international boundary; this chart does not attempt to delineate such international boundaries and is not to be understood as asserting or implying where they are located.

Coast Guard:

The lines drawn on this chart, delineating the limits of the territorial sea and the contiguous zone are solely for the use of the U. S. Coast Guard in connection with its law enforcement functions. They do not represent an official determination of the U. S. Government with respect to the delimitation of internal waters, the territorial sea or the contiguous zone.

(CAUTION -- NOT FOR USE IN NAVIGATION)

The lines drawn on this document delimit provisionally the territorial sea, contiguous zone, and certain relevant internal waters of the United States. They have been prepared by an interdepartmental committee and represent its interpretation of relevant legal principles as applied to the geographical information shown on a Coast and Geodetic Survey nautical chart which has been used as a base. These lines are subject to revision whenever it is required by amplification or correction of the information shown on the chart or by reinterpretation of the legal principles involved. The outer limits of the territorial sea and contiguous zone terminate wherever they intersect an international boundary. This document does not attempt to delineate international boundaries and is not to be understood as asserting or implying where they are located.

AD HOC COMMITTEE OF DEPARTMENTS
OF UNITED STATES GOVERNMENT

MINUTES OF AUGUST 31, 1970 MEETING

PARTICIPANTS:

Department of State:	Dr. Robert D. Hodgson Horace F. Shanwell
Justice Department:	George S. Swarth Jonathan I. Charney
Department of Commerce:	J. F. Richardson Lt. John Callahan
Interior Department:	Denton R. Moore
Coast Guard:	Lt. Michael Reed Lt. Leo Morehouse

The disclaimer attached to the minutes of 24 August was discussed and changes agreed upon. The approved text is enclosed as Attachment A. The Committee then continued its review with the following charts:

1. No. 8252. No closing line was drawn across Gilmer Bay because the appropriate line would have no effect on the outer limit of the territorial sea. Shelikof Bay was closed from Pt. Mary to Beaver Pt., with the island near Pt. Mary not intersected. A question arose as to whether the island off North Cape (near Whale Bay) is realistically a part of the mainland. The decision was postponed until chart 8254 could be examined.

2. No. 8202. Was reviewed and approved.

3. No. 8402. Yakatat Bay was closed without question. Approved.

4. No. 8457. Icy Bay was closed with the headland on Pt. Riou chosen because it was the only point meeting the 45° test. Approved.

5. No. 8513. Approved.

6. No. 8551. Prince William Sound was closed with a line drawn from island to island totaling approximately 22 miles in length. Approved.

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7. No. 8502. A possible closing line from Cape Resurrection to Cape Fairfield was discussed. However, it was left to be determined whether the enclosed portion met the semicircle test.

8. Nos. 8553 and 8554. Contain the Cook Inlet closing lines. The 24 mile fallback line was drawn from a point just north of Ninilchik Light to Kalgin Island to Harriet Pt. The closing line for Chinitna Bay was revised to begin at a headland which would meet the 45° test. Approved.

9. No. 4556. Approved.

The feasibility of using 8502 to cover a small area in the Gulf of Alaska and another on the Alaska Peninsula was considered. It was decided that the scale of 8502 was insufficient for our purpose. Consequently, one small area in the Gulf of Alaska will not be covered by any chart used in the project. There would be no bay closing lines in this uncovered area. Charts 8710 and 8561 are to be considered to cover the portion of the Alaska Peninsula previously intended to be included on 8502.

10. No. 8500. Pavlof Bay was closed from Black Pt. to Cape Volkoi. Approved.

11. No. 8533. Herendeen Bay was closed from Walrus Island to Port Moller. Approved.

The Aleutian Island charts are to be reviewed at the next meeting, which will not occur until 14 September. The Hawaiian Islands will be covered next.

ATTACHMENT A

(CAUTION -- THIS DOCUMENT IS NOT FOR USE IN NAVIGATION)

The lines drawn on this document delimit provisionally the territorial sea, contiguous zone, and certain internal waters of the United States. They have been prepared by an interdepartmental committee and represent its interpretation of relevant legal principles as applied to the geographical information shown on a Coast and Geodetic Survey nautical chart which has been used as a base. These lines are subject to revision whenever it is required by amplification or correction of the information shown on the chart or by reinterpretation of the legal principles involved. This document does not attempt to delineate international boundaries and is not to be understood as asserting or implying where they are located.

...UTES OF SEPTEMBER 14, 1970, MEETING

PARTICIPANTS:

Department of State: (Legal Advisers Office)	Dr. Robert D. Hodgson William Salisbury
Department of Justice:	George S. Swarth Jonathan I. Charney
Department of Commerce:	D. N. Forehand Lt. John Callahan H. J. Dolan
Department of Interior:	Denton R. Moore
Coast Guard:	Lt. Leo Morehouse

The Committee met in Dr. Hodgson's office at 1:00 p.m. The Committee reviewed the lines drawn by Dr. Hodgson on the following charts and took the action indicated:

1. No. 8252. This chart had been held back pending review of a larger scale chart to determine distance between the Island at North Cape and the mainland. Chart No. 8254 shows that the distance between the island and the mainland is approximately 30 feet at the narrowest point and 100 yards at the widest point. Due to the configuration as well as the water depth it was determined that the island could be considered part of the mainland for the purpose of drawing a closing line to Point Lauder. It was also noted that Chart 8254 identifies the island as North Cape. Approved.

2. No. 8552 This chart had been held over in order to determine from a larger scale chart whether a closing line across the water area that includes Bay Harbor and Whidbey Bay could meet the semicircle test. Dr. Hodgson's check of Chart No. 8528 showed that the semicircle test was not met. Closing lines were therefore drawn across from Fault Pt. to the point south of Killer Bay. Whidbey Bay did not meet the semicircle test individually. A closing line was also drawn west of Cape Mansfield. Approved.

3. No. 8502. This is a very small scale chart that is to be used in areas where there are no satisfactory larger scale charts. Charts Nos. 8710 and 8551 that show parts of the area were reviewed and determined not to be satisfactory. It was determined that Chart No. 8502 would be used at scale rather than reduced as the other charts. Lines will be drawn on this chart only in the areas where no satisfactory larger scale chart is available. At the end of those areas the phrase "Continued on Chart _____" will be written. Approved.

4. No. 1274. Bay closing lines were drawn across Terribone and Timbalier Bays on the theory that the islands are intersected by the mainland closing line and that they are screening islands. Approved.

5. No. 9102. Kotzebue Bay was considered an overlarge bay, between Cape Espenberg and Cape Krusenstern. The fall back 24 mile line was drawn from Espenberg Light to the low tide flats considered to be part of the mainland located in front of Kotzebue Light. Approved.

6. No. 9380. Norton Bay was determined to be an overlarge Bay.

Port Clarence was closed by a line from Point Spenser to the closest point on the opposite shore, in accordance with Strohl's theory. Dr. Hodgson had proposed a line perpendicular to the axis of the bay but this was rejected as not applicable to this situation.

Since this chart includes the Diomedes the question of whether the convention line or the median line is the boundary was raised. Although it was agreed that the disclaimer would protect us, it was determined to wait until the Legal Advisers Office could address itself to this question.

Bearmon Bay was determined to be merely an indentation ignoring Neragon Island. This island screens the indentation and makes it a bay that meets the semicircle test. It was felt that this was distinguishable from Caillou Bay in Louisiana since in that case without the island there would only be a mere curvature of the coast and the islands are necessary to create an indentation by forming one of the sides. A closing line was drawn in this case by using Neragon Island only.

7. No. 9302. This small scale chart fills in gaps in the larger scale charts. The phrase "Continued on Chart _____" will be added at the limits of the used areas as discussed in

paragraph nuber three. The three mile limit is not shown on this chart because it is not discernible at a reduced scale. Approved.

8. No. 9103. Approved.

9. Nos. 9052 and 8802. These were held over pending arrival of Chart No. 9052. The question raised was whether Nushagak Bay could be considered an overlarge bay. Consideration tabled.

10. No. 8834. Approved.

11. No. 8865. Approved.

12. No. 8864. Approved.

A closing line was drawn for the half-moon bay on the east side of Semisopochnoi Bay.

13. No. 8863. Approved.

After consideration of the above-mentioned charts, the meeting was adjourned.

AD HOC COMMITTEE ON DELIMITATION OF UNITED STATES COASTLINE

MINUTES OF NOVEMBER 9, 1970, MEETING

PARTICIPANTS:

Department of State:	Dr. Robert Hodgson William Salisbury
Coast Guard:	Lt. Leo Morchouse
Department of Justice:	George S. Swarth Jonathan I. Charney
National Ocean Survey (N.O.S.):	Robert Kale Lawder James F. Richardson Lt. John Callahan
National Oceanic and Atmospheric Administration (N.O.A.A.):	Rear Admiral Harley D. Nygren Hugh Dolan
Department of the Interior:	Francis Cotter

The Law of the Sea Committee on Delimitation of the U. S. Coastline met on November 9, 1970, at 1:00 p.m. in the office of the Geographer of the Department of State, Dr. Hodgson.

Dr. Hodgson opened the meeting by discussing whether or not it would be appropriate to place a 24 mile fallback line in Bristol Bay in accordance with Article VII, paragraph 5, of the Convention on the Territorial Sea and the Contiguous Zone. He stated that based on Charts 9051 and 9052 there would be no additional water area closed off in the vicinity of Nushagak Bay and Kvichak Bay since they would be considered juridical bays on their own. It was next discussed whether or not it would be appropriate to use a 24 mile line in the vicinity of Walrus Island, Hagemaster Island and Togiak Bay. This led to a discussion of whether or not Bristol Bay could be considered an overlarge bay although it met the semicircle test. Dr. Hodgson pointed out that the size of the mouth was over 140 miles and the configuration of the area was relatively shallow with a depth of penetration a bit over 1:1. This was compared to the configuration of Cook Inlet.

It was finally decided that the area of Walrus Island, Hagemaster Island an Togiak Bay might be closed off. It was decided to see if it met the semicircle test. It was also decided that no fallback line for

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Bristol Bay would be drawn. Dr. Hodgson will complete Chart No. 8802 in accordance with these decisions and present them at the next meeting for discussion.

Dr. Hodgson reported that last week he represented the United States at the boundary negotiations between the Government of Mexico and the United States before the International Boundary Commission. During the discussions the question of the closing line for the Rio Grande River came up. Dr. Hodgson proposed the use of the 45° test that is being used by this Committee. The representatives of the Government of Mexico and the members of the Boundary Commission found it to be reasonable and appropriate. A line drawn in accordance with this formula will be used in the treaty. Dr. Hodgson was asked by the Commission to prepare a report setting out the theory and procedure used in the test. This report will be incorporated into the minutes of the Boundary Commission's meeting as being the rationale for the drawing of the line at the Rio Grande.

Mr. Richardson reported that all of the documents of the northern coast of Alaska had been completed and reviewed, that they were now ready for reproduction, and that almost all of the remainder of the documents of Alaska, the Pacific coast, and the Gulf of Mexico were inked and only awaited Dr. Hodgson's review before they would be ready for reproduction. Mr. Richardson wanted to know how many copies would be needed and who would pay for the cost of reproduction.

It was decided that before the documents went to reproduction they would need the approval of the Law of the Sea Task Force. In order to accomplish this, the final maps would be held in Dr. Hodgson's office and tendered to the members of the Task Force for review. A letter would be sent from Mr. Stevenson, the Legal Adviser of the State Department, informing the members of the Task Force that the documents were available for review and providing for a procedure for approval. This procedure will be followed each time a substantial number of documents are completed. Drafts of the Legal Adviser's letter will be discussed at the next Committee meeting.

The question of the number of copies posed the difficult problem of the extent of distribution of the documents. It was agreed that the only interest that may militate against a broad general distribution could be in the international sphere. Mr. Salisbury agreed to look into this matter and attempt to reach a conclusion before the next meeting. It was pointed out that even if a limited distribution is adopted it would be difficult to keep control of the documents.

The question of financing the reproduction seemed to be closely tied to the question of distribution. It was agreed, on principle, however, that all the interested agencies should contribute to the cost of reproduction and that payment in proportion to distribution may be appropriate.

The meeting then turned to reviewing the charts that Dr. Hodgson had prepared. The following charts were reviewed and the noted action taken:

1. No. 4183. Approved.
2. No. 4182. Approved.
3. No. 4181. Approved.
4. No. 4117. Approved.
5. No. 4116. Approved.
6. No. 4115. Approved.
7. No. 1207. Approved.
8. No. 1208. Approved.
9. No. 1209. Approved.
10. No. 1210. The decision was made that Dr. Hodgson would change the closing line for Narragansit Bay. It was agreed that a small island south of the eastern headland is for all practical purposes part of the mainland. Using that island as the eastern headland the closing line would intersect West Island. The closing line should therefore, be drawn between the natural entrance points of the western headland, West Island and the island just off of the eastern headland. Dr. Hodgson would move the closing line seaward in accordance with these decisions, and submit for approval.
11. No. 1214. Approved.
12. No. 1216. Approved.
13. No. 1219. Approved.

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14. Mr. Lord. Approved.

The next meeting was set for Monday, November 16, 1970, at [illegible] p.m.

The meeting was then adjourned.

[illegible]

MINUTES OF NOVEMBER 16, 1970, MEETING

PARTICIPANTS:

Department of State:	Myron Nordquist (Legal Adviser's Office) Dr. Robert D. Hodgson (Geographer)
National Oceanic and Atmospheric Administration:	Hugh Nolan
NMFS:	Denton R. Moore
NOS:	J. Richardson Lt. John Callahan
Department of Justice:	George S. Swarth Jonathan I. Charney
Department of Transportation:	Lt. Lee Stevenson

Mr. Nordquist indicated that the Department of State would supply copies of the documents being prepared by the Committee to foreign governments on an "if asked" basis. There was no objection to distribution to the public in general and so it was agreed that there could be such distribution.

Mr. Richardson supplied the Committee [illegible] costs of the printing of the documents. The estimated costs were as follows:

1,000 copies	$6,950
500 copies	$5,015
100 copies	$4,030

Estimated needs of various agencies for copies of the documents were as follows:

Justice	50
State	200
Transportation	150 (at least)

Other estimates will be received at the next meeting, and a final number will be determined after hearing from all interested agencies. The problems of storage and distribution were discussed but not resolved, and will be discussed again at the next meeting.

The proposed letter to the Under Secretaries or equivalent level individuals of the affected government agencies from the Legal Adviser concerning work of the Committee already completed, which was distributed with the minutes from the last meeting, was reviewed and the final draft prepared (copy attached).

The following charts were reviewed at the meeting:

1. No. 1273. Approved.

2. No. 8892. The Committee reviewed a closing line of 24 miles for Togiak Bay and requested that an oversize bay line be investigated. Consideration tabled.

3. No. 9991. Approved.

4. No. 9992. This chart had been previously reviewed and approved. Approved.

5. No. 1206. Approved.
(Note: The breakwater in Sandy Bay was determined to be an integral part of the harbor works and was used in the boundary determination.)

6. No. 1221. Approved.

7. No. 1227. Approved.

8. No. 1229. See below.

9. No. [illegible]. See below.

10. No. 1232. See below.

11. No. 1233. See below.

Charts 1221, 1227, 1229, 1231-1233 were considered together over the question of whether Pavlof Sound should be closed as one along the outer banks or whether only the two separate bays inside the outer banks should be closed. If a closing line along the outer banks were rejected the closing lines would be drawn from North Point on Sodie Island to Sandy Point and from Camp Point to Bluff Point. A decision could not be reached and these charts were deferred for a later decision.

12. No. 1234. Approved.

13. No. 1235. Approved.

14. No. 1236. Approved.

15. No. 1237. Approved.

16. No. 1238. Approved.

17. No. 1239. Approved.

18. No. 1240. Approved.

19. No. 1241. Approved.

20. No. 1242. Approved.

21. No. 1243. Approved.

22. No. 1244. Approved.

23. No. 1245. Approved.

24. No. 1246. Approved.

25. No. 1247. Approved.

It was decided that the next meeting of the Committee would be held on Wednesday, December 2, 1970, at 1:00 p.m.

AD HOC COMMITTEE ON DELINEATION
OF UNITED STATES COASTLINE

MINUTES OF DECEMBER 2, 1970, MEETING

PARTICIPANTS:

Department of State:	Horace F. Shumwell, Jr. Robert D. Hodgson
Department of Commerce: (NOAA)	Adm. H. D. Nygren Lt. John Callahan J. F. Richardson
Department of Justice:	George S. Swarth Jonathan I. Charney
Department of Interior:	Francis A. Cotter

The meeting was commenced at 1:00 p.m. in the Office of the Geographer of the Department of State, Dr. Robert Hodgson.

The Committee reviewed briefly the status of its work to date. Twenty-nine charts had been submitted to the Coast Survey for inking, and it was estimated that the remaining charts could be prepared for transmission within the next two weeks. Note was made, however, that additional time might be required in dealing with the questions of Long Island Sound and Pamlico Sound.

The Chairman suggested that he, Mr. Charney and a representative from the National Ocean Survey (NOS) meet to review the entire set of minutes and prepare them for subsequent distribution if necessary. The Committee agreed to this suggestion.

Various Committee members questioned representatives of NOS on the time which would be required to produce a full or partial set of documents after a request had been made. NOS estimated that approximately one month would be required. The issue was also raised of the possibility of a larger demand for copies than was anticipated when the original estimates were made. The National Ocean Survey indicated that it could take care of additional overrun at a small additional cost and Admiral Nygren stated that the Survey would assume responsibility for distribution, including any overrun.

The question was raised of preparing documents for the Trust Territories and other U. S. possessions which do not have the status of States. The Committee unanimously agreed that it had not been intended that these areas be examined and, consequently, the group would not consider them at this time.

Lt. Cmdr. Kissinger of the Office of the Special Assistant to the Secretary of State for Fisheries and Wildlife joined the meeting and questioned whether the Committee would attempt to make any determinations concerning continental shelf boundaries between the United States and other countries (e.g. the USSR). The Committee informed him that this matter was not within the Committee's province and that it would make no attempt to deal with it.

Lt. Callahan raised the question of the procedure to be followed in revising documents after the Committee's current work had been completed. He commented that NOS has no jurisdiction to make new and binding determinations of jurisdictional boundaries based on newly discovered evidence and would need to be informed as to how it should proceed when such new evidence is available. The Committee agreed that when its final report is prepared, guidance would have to be given to the Survey to prepare for such contingencies. Illustrative of the type of instructions which would have to be given is whether the Survey should submit to the LOS Task Force new information on a case-by-case (or chart-by-chart) basis, or wait until it has gained sufficient information requiring changes in a number of individual documents or a particular (geographical) set.

After the foregoing discussion, the Committee took action on the following charts:

1. No. 1249. Approved.

2. No. 1249. The issue raised here was whether to draw a closing line across Biscayne Bay from Boca Chita Key to Miami Beach, through a chain of screening islands. Key Largo, which is attached to the Florida mainland is separated from Old Rhodes, Elliot and Sand Keys by a channel three-quarters of a mile in breadth. It was decided that there is a well-marked indentation in Biscayne Bay from Palo Alto Key around to Fisher Island and that the screening islands in question intersect the line drawn between the natural entrance points to the bay. Therefore, a line was drawn from Sands Key through Boca Chita Key and the intersecting island of Key Biscayne to the jetty off Fisher Island. Approved.

AD HOC COMMITTEE ON BOUNDARIES
OF UNITED STATES COASTLINE

MINUTES OF MEETING OF DECEMBER 7, 1970

PARTICIPANTS:

Department of State:	Dr. Robert D. Hodgson Horace F. Shamwell, Jr.
Department of Justice:	George S. Swarth Jonathan I. Charney
Department of Commerce:	Robert K. DeLauder James F. Richardson Hugh Dolan
Coast Guard:	Lt. Leo Morehouse

The Committee met at 1:00 p.m. on Monday, December 7, 1970, in the office of Dr. Robert D. Hodgson, the Geographer of the Department of State.

The Committee acted on the following charts:

1. No. 1204. Closing lines were drawn across Muscongus Bay and Johns Bay, and the northeastern part of Saco Bay, shown in full on No. 1205, infra. Approved.

2. No. 1205. A closing line was drawn across Saco Bay. Approved.

3. Nos. 1211, 1213 and 1215, showing respectively Block Island Sound and eastern Long Island Sound; western Long Island Sound; and lower New York Bay, were considered together. They considered whether to rely on the historic claim to Long Island Sound, which would permit closing it by a line along the chain of islands from Orient Point, on Long Island, to Watch Hill Point, Rhode Island, or whether to treat Long Island as essentially part of the mainland, which would permit closing the western part of Block Island Sound as well, by a line north from Montauk Point, Long Island, to Watch Hill Point. Long Island is 118.1 statute miles (102 geographical miles) long, with channels separating its western end from the mainland of 0.53, 0.5⅛, and 0.3 geographical miles. The channels are wide, deep and carry heavy coastwise (but not international) traffic, serving

heavy industrial development along the north shore. The industrial development along the north shore. The question of whether Long Island can be considered part of the mainland was deferred, pending review by the Legal Adviser's Office and a study by Dr. Hodgson, to see if there are comparable situations elsewhere in the world, which might be examined by way of references. The question of how to close lower New York Bay (Chart No. 1215) was also deferred, pending a decision on how to treat Long Island Sound.

4. Nos. 1229 and 1231, showing Albemarle and Pamlico Sounds. At the November 18 meeting, Dr. Hodgson's proposal to treat the outer banks as the coastline had been tentatively rejected, on the ground that they were islands and did not screen a bay. Accordingly, Dr. Hodgson now proposed separate closing lines, from North Point on Bodie Island to Sandy Point, and from Camp Point to Bluff Point, leaving a high seas enclave in Pamlico Sound. On further discussion, it was concluded that the two sounds can be viewed as a two-headed bay, since a single straight line from North Point to Hog Island could enclose them both, following the precedent of the Svaerholthavet in the Anglo-Norwegian Fisheries case. While the distance between the two heads would make this a rather unrealistic view in the absence of the islands, the presence of the outer banks, forming an island screen linking the two sounds, with only very small openings between islands, is believed to justify treating the area as a single bay extended out by the island screen. This will eliminate the high seas enclave. No closing lines were drawn, as closing lines between the islands would not affect the three-mile line. Accordingly, no closing lines were shown. Approved.

5. No. 1233, deferred from November 18 pending reconsideration of the foregoing, required no further consideration, in view of the above decision. (It has no closing lines.) Approved.

Review of the above charts disposes of all coastal areas except Long Island Sound and New York Bay, discussed above.

Dr. Hodgson reported that no Task Force agency has raised any objection to any of the charts made available for their inspection.

Mr. Dolan, on behalf of Lt. Callahan, reported that work is progressing on preparation of a program for continuing revision of the

three- and twelve-mile lines as required by cartographic or legal developments in the future. NOS hopes to be able to submit a proposed program in two weeks. Dr. Hodgson lent Mr. Dolan some charts issued by the Federal Republic of Germany, as samples of how territorial sea limits have been shown on charts of other countries.

It was agreed that Mr. Dolan would represent NOAA on the three-man committee to edit the minutes of past meetings. The committee will meet in Mr. Shamwell's office (room 6420, State Department) on Thursday, December 10, at a time to be set.

Mr. Richardson said that the end of January will be soon enough to advise NOAA of the number of sets desired. Mr. Shamwell is to have prepared a list of agencies, other than those represented on the Task Force, that may be interested in placing orders.

Mr. Shamwell indicated that the Legal Adviser would notify Task Force members when another set of documents is ready to be examined by them. The Committee considered that a shorter time could be allowed for examination of subsequent maps without causing inconvenience to anyone.

The Committee agreed to meet again at 1:00 p.m. on December 21 in Dr. Hodgson's office. Dr. Hodgson indicated that he would be away, but would leave the Long Island documents for the Committee to consider.

The meeting adjourned.

[illegible]
OF UNITED STATES CONSTLINE

MINUTES OF JANUARY 4, 1972, MEETING

PARTICIPANTS:

Department of State:	Bernard Oxman, Assistant Legal Adviser for Ocean Affairs
	Horace F. Shamwell, Legal Adviser's Office, Chairman
	Dr. Robert D. Hodgson, Geographer
Department of Justice:	Jonathan I. Charney
	George S. Swarth
Department of Commerce:	Hugh Dolan
	Robert Lawler
	Henry Pullen
	James F. Richardson
	Lt. John Callahan
Department of the Interior:	Francis A. Cotter
Coast Guard:	Lt. Leo Morehouse

The Committee met in Dr. Hodgson's Office at 1:00 p.m.

The purpose of the meeting was to determine the position with respect to Long Island Sound and New York Bay. Long Island Sound is considered to be the internal waters of the United States. The reasons for this determination are set forth in a letter of April 8, 1969 from the Legal Adviser to the Solicitor General.

For this reason the Committee drew a closing line across Long Island Sound delimiting the area of historic waters. A line was not drawn from Watch Hill Point to Montauk Point because such a line would enclose waters within Block Island Sound which do not qualify for historic treatment.

The Committee gave consideration to the possibility of closing off the entire area discussed above under the theory that it is a legal bay, in accordance with the rules contained in Article 7 of the Geneva

Convention on the Territorial Sea and Contiguous Zone. However, in order for this area to qualify as a legal bay, a prior determination must be made that Long Island constitutes a part of the mainland of the United States. If Long Island is an island, then the area in question does not qualify as a bay.

In order to determine whether or not Long Island could be considered essentially mainland, detailed consideration was given to the geography of the area. Not only was the distance separating Long Island from the mainland discussed, but also the depth of the channels separating it from the mainland and the use that is made of those channels by vessels. It was concluded that Long Island could not be considered part of the mainland based on any of these factors. The Committee then discussed whether or not Long Island could be considered part of the mainland based on the theory that it forms the bank of the East River. The Geographer made a detailed study of this question and consulted other experts in the field. It was his conclusion that he could not consider East River to be an actual river because of its physical characteristics, including the presence of a unique tidal regime. Consequently, the Committee could not conclude that Long Island should be considered as part of the mainland and drew the closing lines indicated on Chart 1211.

These closing lines do not affect the limits of United States contiguous zone because of the presence of offshore islands which determine the delimitation of the 12 mile fishing limit.

New York Bay was closed from Sandy Hook to Rockaway Point based on the fact that there is a juridical bay inside a line from Sandy Hook to Throgs Neck. Since Long Island is crossed by this closing line the closing line will be drawn between Sandy Hook and Rockaway Point.

The following maps were therefore approved:

No. 1211 (35th Ed., August 2, 1969, NM 31/69),
No. 1215 (23rd Ed., July 26, 1969, NM 30/69).

It was concluded at this meeting that the attached list of 155 documents was approved for publication, notwithstanding the fact that certain individual documents were not specifically approved in the minutes.

The meeting then adjourned.

U.S. DEFENSE MAPPING AGENCY

No.	Edition	Edition Date	Revised Print Date
ATLANTIC COAST			
1201	6	12/30/68	
1202	10	1/27/69	
1203	7	10/26/68	
1204	14	12/13/69	
1205	12	12/2/68	
1206	11	3/10/69	
1207	10	7/7/69	
1208	14	7/[illegible]/69	
1209	17	12/20/69	
1210	13	7/[illegible]/69	
1211	15	8/2/69	
1214	8	6/2/69	
1215	23	7/26/69	
1216	13	8/30/69	
1217	22	1/10/70	
1219	23	8/1/70	
1220	16	12/13/69	
1221	14	11/22/69	
1222	29	11/8/69	
1227	8	6/24/68	
1229	15	12/20/69	
1231	16	8/9/69	
1232	16	1/17/70	
1233	15	10/4/69	
1234	10	1/25/69	
1235	8	6/30/69	
1236	6	2/17/69	
1237	4	9/16/68	
1238	5	12/25/67	
1239	9	2/22/69	
1240	8	11/27/67	
1241	7	12/2/68	
1242	9	2/21/70	
1243	8	8/23/69	
1244	4	2/17/69	
1245	7	8/30/69	
1246	5	10/7/68	
1247	4	2/17/69	
1248	10	8/2/69	
1249	9	11/27/67	10/21/68
1250	7	12/11/67	

No.	Edition	Edition Date	Revised Print Date
1251	9	12/20/69	
1252	8	12/4/67	
1253	4	8/21/67	
1254	6	11/25/68	
1255	12	8/23/69	
1256	6	5/13/68	
1257	15	4/11/70	
1258	6	12/13/69	
1259	7	12/13/69	
1260	3	10/1/69	
1261	7	11/22/69	
1262	8	9/21/69	
1263	9	7/1/69	
1264	6	12/20/69	
1265	15	11/1/69	
1266	23	9/6/69	
1267	15	3/1/70	
1268	12	3/14/70	
1270	9	6/20/69	
1272	25	5/15/70	
1273	11	4/10/70	
1274	9	7/1/69	
1275	9	7/25/69	
1276	12	2/27/70	
1277	13	10/25/69	
1278	10	10/22/69	
1279	13	10/4/69	
1280	9	3/10/69	
1282	30	10/4/69	
1283	13	1/6/69	
1284	14	1/28/70	
1285	8	7/8/68	
1286	18	10/22/69	
1287	6	9/23/68	
1288	8	10/10/69	
1351	8	1/15/68	
HAWAII			
4115	8	9/9/63	1/16/67
4116	14	7/1/69	
4117	8	7/15/68	
4181	4	6/23/69	

No.	Edition	Edition Date	Revised Print Date
4182	3	3/21/70	
4183	4	1/15/68	
PACIFIC COAST			
5101	14	1/31/70	
5202	12	1/15/69	
5302	6	6/1/70	
5402	13	2/14/70	
5502	10	7/1/70	
5602	10	11/22/69	
5702	6	12/11/67	
5802	8	2/10/69	
5902	9	12/4/67	
6002	12	3/4/68	
6102	9	11/11/68	
ALASKA			
8002	10	8/9/69	
8102	11	6/20/70	
8152	7	7/8/68	
8202	15	10/21/68	
8252	4	5/19/69	
8402	3	11/15/69	
8457	3	3/9/54	10/31/66
8502	15	7/15/68	
8513	9	8/9/69	
8552	13	12/30/68	
8553	3	2/17/69	
8554	11	1/22/70	
8556	3	10/23/67	
8802	23	9/21/69	
8833	7	7/16/67	
8834	2	1/13/64	5/1/67
8859	5	4/29/68	
8860	15	2/26/68	
8861	2	3/15/66	12/4/67
8862	5	3/14/70	
8863	7	5/1/67	
8864	7	3/4/68	
8865	4	7/29/63	7/29/68
8995	8	6/6/70	

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No.	Edition	Edition Date	Revised Print Date
9051	3	10/17/66	
9052	3	3/24/69	
9103	5	3/7/70	
9302	21	10/30/68	
9370	4	12/27/69	
9380	9	2/14/70	
9402	3	1/20/69	
9450	2	10/7/68	
9451	2	10/7/68	
9452	2	5/13/68	
9453	2	5/13/68	
9454	2	5/13/68	
9455	2	5/13/68	
9456	2	5/13/68	
9457	2	6/24/68	
9458	2	6/10/68	
9459	3	5/13/68	
9460	3	6/24/68	
9461	3	6/10/68	
9462	3	6/24/68	
9463	3	5/13/68	
9464	3	6/10/68	4/11/70
9465	3	6/10/68	4/18/70
9466	3	6/10/68	5/9/70
9467	3	6/10/68	5/9/70
9468	3	6/24/68	
9469	3	6/10/68	4/11/70
9470	3	8/12/68	2/14/70
9471	3	6/10/68	
9472	3	6/10/68	
9473	3	6/24/68	3/21/70
9474	3	8/12/68	3/21/70
9475	3	8/12/68	
9476	3	8/12/68	
9477	3	8/12/68	
9478	3	8/12/68	

DX HY

The Legal Adviser

MEMORANDUM TO MR. NEUMAN - L/PMD

Bob:

Ellert of the Counsel's office at Commerce called me re the attached. Part of ESSA is coast and geodetic survey. They need policy guidance in order to draw up baseline maps. We have an interest in making sure that the criteria used conform to those of the Geneva Convention. [illegible] of course [illegible] lies inevitably against most of the coastal nations claims etc.

Ellert suggested that the best State representation would be a lawyer familiar with these problems and the geographer.

For your action, I am sending a copy to Bob Hodgson.

Tex

CC: Mr. Hodgson
INR/RSF/GE - Room 8744

Plaintiff's Exhibit 1 to Deposition of Robert Hodgson dated December 9, 1971: Memorandum to Mr. Neuman from Department of State, The Legal Adviser.

Ex 1

THE SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

Honorable William P. Rogers
Secretary of State
Washington, D. C. 20520

Dear Mr. Secretary:

Recently several government agencies have brought to our attention questions of policy and interpretation regarding the boundary demarcation of our offshore domain as shown on charts prepared by the Environmental Science Services Administration. To properly resolve these questions the views of the Departments of Justice, State, Transportation and Commerce are necessary.

This Department, therefore, proposes the immediate establishment of an ad hoc committee composed of representatives of the Departments of State, Justice, Transportation and this Department. This committee would furnish a framework within which the international, jurisdictional and political policy questions pertaining to boundary demarcation could be resolved.

I would appreciate your reaction to this proposal. I am also asking the Attorney General and the Secretary of Transportation for their views.

Sincerely,

Secretary of Commerce

ANALYSIS BRANCH

Plaintiff's Exhibit 1 to Deposition of Robert Hodgson dated December 9, 1971: Letter to William P. Rogers from Secretary of Commerce.

DEPARTMENT OF STATE
Washington, D.C. 20520

DX IC

May 1, 1970

Acted on S/S May 11, 1970

UNCLASSIFIED

MEMORANDUM FOR THE SECRETARY

THROUGH: J - Ambassador Johnson
S/S

FROM: L - John R. Stevenson

SUBJECT: Commerce Department Proposal for Ad Hoc Committee on Demarcation of United States Offshore Boundaries: ACTION MEMORANDUM

By letter dated March 26, 1970, the Secretary of Commerce proposed to you the establishment of an interdepartmental ad hoc committee to review questions posed by several Government agencies relating to the boundary demarcation of the United States offshore domain as shown on charts of the Environmental Science Services Administration (Tab B). The committee would be comprised of representatives of the Departments of State, Justice, Transportation and Commerce. As described in Mr. Stans' letter, it would furnish a framework for the resolution of international, jurisdictional and political policy questions pertaining to boundary demarcations.

The need for this committee stems from the failure of the agencies mentioned above to agree upon a proper interpretation and application of symbols devised by ESSA to designate points along the U.S. coast to be used for the purpose of identifying baselines of the United States. This committee should not, however, become involved in the complex legal and political considerations connected with any change in U.S. policy regarding baselines.

Attached is a proposed response to Mr. Stans' letter approving the proposal to establish a committee for the purposes as outlined, with the understanding

L/PolC, HF Shamwell 5/1/70

Memorandum for the Secretary through Ambassador Johnson, from John R. Stevenson, dated May 1, 1970.

that its functions would be limited as described above, and with the additional recommendation that the committee be set up as an ad hoc committee of the Inter-Agency Task Force on the Law of the Sea. (Tab A)

RECOMMENDATION:

That you sign the letter at Tab A to the Secretary of Commerce.

Attachments:

Tab A - Letter to the Secretary of Commerce
Tab B - Letter from the Secretary of Commerce, March 26, 1970

Clearances:
L/PMO - Mr. Neuman
INR/RSF/GE - Mr. Hodgson
S/FW - Mr. Brittin
U - Mr. Hartman
S/PC - Mr. Hartman

L/PMO:HFShamwell:jah 5/1/70
ext. 22658

DX IC 1

COPIES TO:
L
L/PMO
INR/RSF/GE
PM
S/FW
J
S/S-RF
Microfilm

RSR 1 ES
Attention
Keep this study together.

THE SECRETARY OF STATE
WASHINGTON

S/S 4948

May 13, 1970

Dear Maury:

Your recent letter suggested the establishment of an interdepartmental ad hoc committee to review questions relating to the boundary demarcation of the United States offshore domain as shown on charts of the Environmental Science Services Administration. As I understand the need for such a committee, its purpose would be to gain interagency consensus on the particular means to be employed in identifying the baselines from which the offshore boundaries of the United States can be delineated. I understand that this group would not become involved in the complex legal and political considerations connected with any change in U.S. policy regarding baselines.

I concur in the desirability of establishing a committee along the lines outlined in your letter. I suggest, however, that it would be appropriate to establish it as an ad hoc committee of the Inter-Agency Task Force on the Law of the Sea which has been established to coordinate interagency activities in this field.

I look forward to hearing from you further regarding the implementation of this proposal.

With best personal regards,

Sincerely,

William P. Rogers

The Honorable
Maurice H. Stans,
Secretary of Commerce.

Clearances:
L/PMO - Mr. Neuman
L - Mr. Stevenson
INR/RSF/GE - Mr. Hodgson
PM - Capt. Fros
S/FW - Mr. Brittin

L/PMO:HFShamwell:jah 5/1/70
Revised in S/S-S:HHornblow:dg 5/11/70

MICROFILMED BY S/S: CMS

Letter, William P. Rogers to Maurice H. Stans, Secretary of Commerce, dated May 13, 1970.

IC-1

Pol 33-4 US

DEPARTMENT OF STATE
WASHINGTON, D. C.

S/PC - Mr. Dobbins

For clearance.

Jim Morton
S/S-S

A. H. Lakmaker is to Capt Weiss who had no problems. If it's all right with you I will tell S/S that we clear it on it.
J.H.D.

DX IE 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
Washington 25, D. C.

7/20/56

NOTICE OF PROPOSED RULE MAKING

With respect to salmon fishing on the high seas of the North Pacific Ocean by United States nationals, a Notice of Proposed Rule Making was signed on June 29 and published in the Federal Register on July 3, 1956. This notice was as set forth below:

TITLE 50 - WILDLIFE
CHAPTER I - FISH AND WILDLIFE SERVICE
DEPARTMENT OF THE INTERIOR
SUBCHAPTER F - ALASKA COMMERCIAL FISHERIES
MISCELLANEOUS AMENDMENTS

NOTICE OF PROPOSED RULE MAKING

Pursuant to Section 4 of the Administrative Procedure Act of June 11, 1946 (5 U.S.C. 1003) notice is hereby given that the Secretary of the Interior, under the authority of the Act of June 18, 1926 (44 Stat. 752; 48 U.S.C. 221 et seq.), as amended, and the Act of August 12, 1954 (68 Stat. 698; 48 U.S.C. 1021 et seq.), on the basis of successful exploratory net fishing for salmon native to Alaska on the high seas of the North Pacific Ocean, and after consultation with the United States section of the International North Pacific Fisheries Commission, proposes to:

1. Add the following section to Part 101:

§ 101.19 Waters of Alaska. For the purpose of these regulations, the term "waters of Alaska" north and west of the International Boundary at Dixon Entrance are defined as including those extending three miles seaward (1) from the coast, (2) from lines extending from headland to headland across all bays, inlets, straits, passes, sounds and entrances, and (3) from any island or groups of islands, including the islands of the Alexander Archipelago, and the waters between such groups of islands and the mainland.

Notice of Proposed Rule Making, United States Department of the Interior, Fish and Wildlife Service, Joan L. Farley, Director, June 29, 1956.

2. (a) To amend Section 103.1 so as to define the Kotzebue-Yukon-Kuskokwim area to include all waters of Alaska between Point Hope and Cape Nevenham;

(b) To amend Section 104.1 so as to define the Bristol Bay area to include all waters of Alaska in Bristol Bay east of a line from Cape Nevenham to a point 3 statute miles south of Cape Menshikof;

(c) To amend Section 105.1 so as to define the Alaska Peninsula area to include all waters of Alaska from a point 3 statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point at the entrance to Kuiukta Bay;

(d) To amend Section 106.1 so as to define the Aleutian Islands area to include all waters of Alaska in the Aleutian Islands west of, and including, Unimak Pass;

(e) To amend Section 109.1 so as to define the Cook Inlet area to include all waters of Alaska in Cook Inlet north of Cape Douglas and west of Point Gore, including the Barren Islands;

(f) To amend Section 110.1 so as to define the Resurrection Bay area to include all waters of Alaska in the Gulf of Alaska between Point Gore and Cape Fairfield;

(g) To amend Sections 115.1, 116.1, 117.1, 118.1, 119.1, 120.1, 121.1, 122.1, 123.1, and 124.1 so as to define the Southeastern Alaska area to include all waters of Alaska in Southeastern Alaska between Cape Fairweather and Dixon Entrance.

(h) To amend Sections 117.2, 118.2, 119.2, 121.2, 122.2, 123.2, and 124.2 by deleting the words "territorial waters" and substituting in lieu thereof the words "waters of the area."

3. To add a new Part reading as follows:

PART 130 - NORTH PACIFIC AREA

§ 130.1 Definition. The North Pacific Area is defined to include all waters of the North Pacific Ocean and Bering Sea north of Dixon Entrance and east of 175 degrees west longitude, exclusive of the waters of Alaska as defined in Part 101.

§ 130.2 Salmon fishing prohibited, exception. No person or fishing vessel subject to the jurisdiction of the United States shall fish for or take salmon, except by trolling, in the North Pacific Area, as defined in this part.

Interested persons are invited to participate in the proposed rule making by submitting their views, data, or arguments in writing to the Director, Fish and Wildlife Service, Washington 25, D. C., within 15 days from the date of publication of this notice in the Federal Register.

June 29, 1956

Wesley A. D'Ewart
Assistant Secretary of the Interior

John L. Farley
Director

Interior--Duplicating Section, Washington, D. C.

DEPARTMENT OF STATE INSTRUCTION

2336

DX IE 2

UNCLASSIFIED
(Security Classification)

IN DC USE ONLY

Via AIR Pouch 06 March 22, 1957

NO.

SUBJECT: Minutes of the United States - Canada Conference on the Coordination of Fisheries Regulations at Seattle.

TO: American Embassy, OTTAWA

Please deliver immediately to the appropriate official of the Canadian Government the 30 copies enclosed of the Minutes of the Conference on Coordinated Fisheries Regulations. One hundred copies were requested by Mr. George R. Clark, Deputy Minister of Fisheries. Seventy additional copies are being forward by surface pouch for similar delivery.

Herter, acting

Enclosure:
30 copies of Minutes of Conference.

UNCLASSIFIED
(Security Classification)

DRAFTED BY: WFL — APPROVED BY: WFL
CLEARANCES: Warren F. Looney 3/22/57

MAR 25 1957 P.M.

Department of State Instruction 2336, Unclassified, March 22, 1957, To: American Embassy, Ottawa, from Herter, acting, RE: Minutes of the United States Canada Conference on the Coordination of Fisheries Regulations at Seattle

DX IE 3

DEPARTMENT OF STATE

June 7, 1957

THIS DOCUMENT MUST BE RETURNED TO THE RM/R CENTRAL FILES

To All Recipients of Summary of Proceedings of the Conference on Co-ordination of Fisheries Regulations between Canada and the United States held at Seattle, February 27-28, 1957.

There is enclosed an exchange of letters between the Chairmen of the United States and Canadian delegations at the above conference which constitutes an amendment to the Summary of Proceedings. These letters are: from Mr. Herrington dated April 26, 1957; from Mr. Clark dated May 1, 1957; and from Mr. Clark dated May 31, 1957.

Although the exchange of letters constitutes an amendment of the Summary of Proceedings, it does not in any substantive way change the Summary or the understandings set forth in the Summary. The amendment is merely a clarification and an explanation in detail of an important agreement reached at Seattle namely, that concerning continuing liaison between the Pacific Marine Fisheries Commission (Pacific Coast States) and the Department of Fisheries of Canada.

You may wish to attach these documents to your copy of the Summary of Proceedings.

Sincerely yours,

Warren F. Looney
Deputy Special Assistant
for Fisheries and Wildlife
to the Under Secretary

State, FD.Wash.,D.C.

Correspondence regarding, and summary of, Conference on Co-ordination of Fisheries Regulations between Canada and the United States, Seattle, Washington, February 27-28, 1957.

BEST COPY AVAILABLE

CANADA

DEPUTY MINISTER OF FISHERIES

OTTAWA

May 31, 1957

Mr. Wm. C. Herrington
Special Assistant for Fisheries
and Wildlife to the
Under Secretary of State
Department of State
Washington, D. C.

Dear Mr. Herrington:

Please refer to my letter of May 1 in reply to your letter of April 26 on the subject of amendment of the Summary Proceedings of the Seattle Conference on Co-ordination of Fisheries Regulations whereby you were informed that the Under-Secretary of State for External Affairs was being requested to write your Department indicating our acceptance of the suggested amendment.

Upon taking the matter up with the Under-Secretary of State for External Affairs, it was his view that it would perhaps be more appropriate to have the minutes of the meeting corrected by direct communication between the officials under whose supervision the meetings were held and the minutes kept. Upon further thought, we are inclined to agree with this view. Therefore, as suggested in your letter of April 26, 1957, you may consider my letter of May 1, 1957, and this letter, sufficient acceptance of your proposal for amendment of the minutes in the manner indicated in your letter.

Yours very truly,

/S/ G. R. CLARK

G. R. Clark
Deputy Minister

State, FD., Wash.,D.C.

CANADA

DEPUTY MINISTER OF FISHERIES

OTTAWA

May 1, 1957

Mr. Wm. C. Herrington
Special Assistant for Fisheries
and Wildlife to the
Under Secretary of State
Department of State
Washington, D. C.

Dear Mr. Herrington:

I have your letter of April 26 on the subject of amending the Summary Proceedings of the Canada - United States Conference on Co-ordination of Fisheries Regulations held in Seattle, February 27-28, 1957.

We think that the amendment proposed in your letter clarifies the intent of the agreement reached at the Conference. I am therefore requesting the Under-Secretary of State for External Affairs to write your department indicating our acceptance of the suggested amendment. We also agree that the exchange of letters on the subject will be the only required formality.

I am happy indeed to learn that the Conference is well regarded on your side. Our people are also very happy with the results achieved so far. I hope that the practical application of the agreement may justify our efforts in that behalf.

Yours sincerely,

/S/ G. R. CLARK

G. R. Clark
Deputy Minister

State, FD., Wash., D.C.

DEPARTMENT OF STATE

April 26, 1957

Dear Mr. Clark:

I refer to the United States - Canada Conference on Co-ordination of Fisheries Regulations held at Seattle February 27-28, 1957. I am glad to tell you that on this side of the border the Conference is regarded as a successful and fruitful one. I trust it is also so viewed by your people.

The Summary of Proceedings issued subsequent to the Conference is here generally felt to be an accurate abstract of the discussions and agreements. However, there is some feeling that one important agreement is set forth by implication only, and that because of its significance it ought to be described in greater detail.

This agreement was to review and coordinate salmon net gear regulations affecting length, depth, construction and mesh size.

It is suggested that the following amendment to the agreement numbered 12 (Summary of Proceedings, page 8) might clearly give the sense of the Conference agreement, the words underlined constituting the amendment:

"(12) It was agreed to maintain close and continuing liaison between the Pacific Marine Fisheries Commission (Pacific Coast States) and the Department of Fisheries in Canada at the technical and administrative levels for the purpose, inter alia, of reviewing and co-ordinating regulations, including salmon net gear regulations affecting length, depth, construction, and mesh size."

I should appreciate your comments on this amendment. If it should prove satisfactory to you, I suggest that our exchange of letters constitute an Amendment and be distributed to the interested people in our respective countries.

Sincerely yours,

Wm. C. Herrington
Special Assistant
for Fisheries and Wildlife
to the Under Secretary

The Honorable
George R. Clark,
Deputy Minister of Fisheries,
Department of Fisheries, Ottawa, Canada.

State, FD, Wash.,D.C.

- 1 -

SUMMARY OF PROCEEDINGS

CONFERENCE ON

CO-ORDINATION OF FISHERIES REGULATIONS

BETWEEN

CANADA AND THE UNITED STATES OF AMERICA

SEATTLE, WASHINGTON, FEBRUARY 27-28, 1957

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CONFERENCE ON CO-ORDINATION OF FISHERIES REGULATION

SUMMARY OF PROCEEDINGS

Representatives of Canada and the United States met in Seattle, Washington on February 27 and 28 to discuss co-ordination of specific fisheries regulations for the Pacific area pertaining to offshore salmon net fishing, salmon troll fishing and trawl fishing for petrale sole and black cod.

Mr. G. H. Clark, Deputy Minister of Fisheries, Ottawa, Canada and Mr. W. C. Herrington, Special Assistant to the Under Secretary of State, Washington, D. C., headed the Canadian and United States Delegations respectively. A list of those attending the conference is appended.

Offshore salmon net fishing:

The representatives of both Canada and the United States agreed that development of major offshore salmon net fisheries posed a serious management problem and that regulation of such fishing in the eastern Pacific ocean was essential to the conservation of salmon stocks of North American origin.

The Canadian Delegation stated that Canada was prepared to prohibit her fishermen from taking salmon in offshore waters between 35° and 60° north latitude, except by trolling. For the purpose of this proposed regulation, offshore waters would include the high seas off continental United States and Alaska and the waters seaward of a line joining Bonilla Point and Tatoosh Island at the entrance of the Strait of Juan de Fuca commencing at the point of intersection with the international boundary line; thence northwesterly along the shoreline of Vancouver Island to Cape Beale; thence along a line projected therefrom to Amphitrite Point; thence along the shoreline of Vancouver Island to Cox Point; thence along a line projected therefrom to Lennard Island Light; thence along a line projected therefrom to the westernmost point of Vargas Island; thence along a line projected therefrom to Rafael Point on Flores Island; thence along a line projected therefrom to Estevan Point; thence along a line projected therefrom to Pajo Point; thence along a line projected therefrom to Clerke Point on Brooks Peninsula; thence along a line projected therefrom to Solander Island Light; thence northerly along a line projected therefrom to Lawn Point; thence along a line projected therefrom to Cape Russell; thence along a line projected therefrom to Cape Scott Light; thence easterly along a line projected therefrom to Cape Sutil; thence northerly along a line projected therefrom to Herbert Point on Calvert Island; thence northwesterly along a line projected therefrom to Currie Islet Light; thence along a line projected therefrom to Nab Rock; thence along a line projected therefrom to the southernmost point of the Estevan Islands; thence along a line projected therefrom to Terror Point on Banks Island; thence along a point projected therefrom to Bonilla Island Light; thence northerly along a line projected therefrom to Butterworth Rocks; thence along a line projected therefrom to a position 3 miles west of the northwesterly point of Dixon Island; thence along a line projected therefrom due north to the international boundary line between Canada and Alaska; except the waters along the coast of the

Queen Charlotte Islands inside a line commencing at Langara Island Light and projected easterly therefrom to Shag Rock; thence along a line projected therefrom to Hiat Point; thence along a line projected therefrom to Rose Point; thence southerly along the eastern shoreline of Graham Island to Lawn Point at the entrance to Skidegate Inlet; thence along a line projected therefrom to Gray Point on Moresby Island; thence along a line projected therefrom to Scudder Point on Burnaby Island; thence along a line projected therefrom to Garcin Rocks Light; thence along a line projected therefrom to Pest Point on Kunghit Island; thence along a line projected therefrom to Sr. James Island Light; thence northwesterly along a line projected therefrom to Welcan Fraser Point on Moresby Island; thence along a line projected therefrom to Chads Point; thence along a line projected therefrom to Kitgoro Point; thence along a line projected therefrom to the northwesternmost point of Hippa Island; thence along a line projected therefrom to Tian Head on Graham Island; thence along a line projected therefrom to the northeasternmost point of Frederick Island; and thence northerly to the point of commencement at Langara Island Light.

The Canadian Delegation advised the Conference that the reference points used to describe the proposed line beyond which salmon fishing, except by the use of troll gear, would be prohibited were taken from Canadian Hydrographic Charts No. 3593, 3744 and 3844 and that it might be necessary to adjust the line somewhat in order to describe it adequately for enforcement purposes. Further, such a restriction on offshore salmon fishing could be brought into effect almost immediately if general agreement were reached during the conference.

The United States Delegation stated that:

(1) The Secretary of the Interior now prohibited the taking of salmon by United States nationals in the Pacific Ocean, outside the waters of Alaska, north of Dixon Entrance and east of 175° west longitude, except by means of trolling.

(2) Federal legislation will be sought to extend in time for this season the geographical area of this regulatory power of the Secretary of the Interior as far south as approximately 48°30' north latitude.

(3) The State of Washington was taking action through its legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the State seaward of a line commencing at the point of intersection of the international boundary line in the Strait of Juan de Fuca and a line drawn between Sail Rock in Clallam County and Owen Point at the entrance to Fort San Juan on Vancouver Island; thence southerly along a line projected therefrom through Sail Rock to the shoreline; thence westerly along the state shoreline of the Strait of Juan de Fuca to Cape Flattery; thence southerly along the state shoreline of the Pacific Ocean crossing any river mouths at their most westerly points of land, to Point Brown at the entrance to Grays Harbour; thence southerly along a line projected therefrom to Point Chehalis Light on Point Chehalis; thence southerly from Point Chehalis along the state shoreline of the Pacific Ocean to Cape Shoalwater Light at the entrance to Willapa Bay; thence southerly along a line projected therefrom to Leadbetter Point; thence southerly along

the state shoreline of the Pacific Ocean to the inshore end of the North jetty at the entrance to the Columbia River; thence southerly along a line projected therefrom to the knuckle of the South jetty at the entrance of said river.

This action would also make it unlawful for any citizen of the state to take salmon with any type of net in the international waters of the Pacific Ocean.

The Bill containing these provisions had been introduced in the State Legislature but could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(4) The State of Oregon was taking action through its legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the State in award of a line commencing at the point of intersection of the California-Oregon state boundary with the Pacific Ocean high water mark shoreline; thence northerly along such high water mark shoreline, including extensions thereof across the waters of the bays or tidal areas of streams emptying into the Pacific Ocean, to the mouth of the Columbia River; thence northerly across the waters of the Columbia River along the line designating and defining the mouth of such river under OCS Bll. 130 to the point of intersection of such line with the Oregon-Washington state boundary.

This action would also make it unlawful for any citizen of the state to take salmon with any type of net in the international waters of the Pacific Ocean.

The Bill containing these provisions had been introduced in the State Legislature but could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(5) The State of California was taking action in its legislature to prohibit the taking of salmon by the use of any type of net within the territorial waters of the state and by its citizens in international waters of the Pacific Ocean.

This Bill could be amended if, as a result of agreement reached at the Conference, amendment appeared desirable.

(6) If the State Bills fail of enactment, Federal Government legislation will be sought to secure in time for this season Federal Government regulation in the high seas as far south as required to provide protection for all salmon stocks located in the eastern Pacific Ocean off continental United States.

The lines proposed by the Canadian and United States Delegations were acceptable to the Conference as a whole with the exception of the following specific areas:

(a) The location of the line across the Strait of Juan de Fuca.

(b) The location of certain segments of the line proposed along the west coast of Vancouver Island.

(c) The location of the line described in the Alaska Fishery Regulations.

A sub-committee was appointed to consider and report on the location of the line across the Strait of Juan de Fuca. The United States Delegation requested an opportunity to give further consideration to the location of the line along the west coast of Vancouver Island as proposed by the Canadian Delegation and the Canadian Delegation requested an opportunity to consider the location of the line in Alaska as described in the Alaska Fishery Regulations.

Salmon troll fishing:

The United States Delegation stated that different regulations with regard to open season and size limit applied to the troll fisheries off the coast of continental United States, Canada and Alaska and that in their view, such regulations were necessary to conserve the salmon stocks and thus it would be desirable to have these conform in the respective areas.

The situation with respect to the season applicable to silver or coho salmon was satisfactory since California, Oregon and Washington had adopted a June 15 to October 31 season in 1963, Canada had adopted the same season in 1962 and the Alaska season was somewhat more restrictive extending from July 1 to September 30.

A season for chinook or spring salmon extending from April 15 to October 31 was adopted by the states of Oregon and Washington in 1956 and the season in the state of California is more restrictive extending from May 1 to September 30. The season in Alaska extends from April 15 to October 31 while the closed season in Canadian troll fishing regulations extends from December 1 to January 31 in the following year.

The United States Delegation stated that regulations for the coming season in Southeast Alaska (which is the only area trolled in Alaska) were not yet finalized by publication. There was excellent possibility that the opening date for the chinook or spring salmon would be changed to April 15; however, with 30 days notice required after publication, entry into effect would occur this year some days after March 15.*

The Canadian Delegation stated that the necessary action would be taken to have the Canadian season for the chinook or spring salmon troll fishery changed to April 15 to October 31 and that this would be put into effect before the coming season.

A minimum size limit of 26 inches total length for chinook or spring salmon caught by trolling was adopted by the states of California,

* Editor's note: The change to April 15 for Southeast Alaska was published in the Federal Register on March 6, 1963. See XXII FR 1379. Accordingly, the new regulation became effective April 6, 1963.

Oregon and Washington in 1949 and a slightly larger minimum size limit applies in Alaska since a 26 inch fork length measurement had been adopted. No minimum length for troll-caught chinook or spring salmon has been established in Canada but there is a general prohibition against retention of any salmon weighing less than 3 pounds. Following a general exchange of views on regulation of the salmon troll fisheries the matter was referred to a sub-committee for consideration and report.

Trawl fishing:

The United States Delegation outlined certain recent developments in the otter trawl fisheries which demonstrated in their view the necessity for further restrictions particularly with respect to the fishing season for petrale sole, a minimum size limit for black cod and the mesh size authorized for trawl nets.

After a brief discussion a sub-committee was appointed to give consideration to these particular aspects of the trawl fisheries and to prepare a report for submission to the Conference.

Sub-committee reports:

At the concluding session of the Conference, reports were presented by the chairmen of the sub-committees. After discussion these were accepted and approved by the Conference. The full text of each report is appended.

Major agreements reached:

The following major agreements were reached between the Canadian and United States Delegations during the Conference:

(1) The location of the line delimiting offshore waters as proposed by the Canadian Delegation was appropriate with the following shoreward adjustment on the west coast of Vancouver Island beginning at Rafael Point on Flores Island thence along a line projected therefrom to the light and whistle buoy at the entrance to Refuge Cove; thence along a line projected therefrom to Hesquiat Point; thence westerly along a line projected therefrom to Matlahaw Point; thence following the shoreline to Estevan Point; thence northerly along a line projected therefrom to Escalante Point; thence along a line projected therefrom to Maquinna Point on Nootka Island; thence following the shoreline of Nootka Island to Ferrer Point; thence along a line projected therefrom to the light and whistle buoy at the entrance to Kyuquot Channel; thence along a line projected therefrom to Lookout Island Light; thence along a line projected therefrom to a point at the southwestern entrance to Nasparti Inlet; thence westerly along a line projected therefrom to Clerke Point on Brooks Peninsula;

(2) The location of the line delimiting offshore waters across the entrance to the Strait of Juan de Fuca proposed by the Canadian Delegation, namely the Bonilla Point - Tatoosh Island line, should be adopted provisionally and scientific and statistical studies should be undertaken to determine the composition and migratory movements of the silver or coho salmon stocks on each side of the line in order that the line may be relocated if necessary as a conservation measure based on scientific findings.

In this connection it was understood that the research results would be reviewed within two years by the interested agencies and that interim regulatory action could be taken by the State of Washington and Canada during the two year period if the research results showed that such action was required to conserve the silver or coho salmon stocks;

(3) The location of the remainder of the line delimiting offshore waters as proposed by the United States Delegation was appropriate;

(4) The line described in the Alaska Fishery Regulations was appropriate.

In this connection it was understood that the closing lines connecting headlands in Alaska, which were discussed and which serve as a baseline in some areas for the measurement of the seaward limits of the "waters of Alaska" as this expression is used in the Alaska Fishery Regulations, are not definitive. On the request of the Canadian Delegation for a chart showing the definitive line the United States Delegation agreed to submit such a chart as soon as possible;

(5) All the lines delimiting offshore waters agreed to during the Conference would be made effective for the coming season and consideration would be given to adjusting the lines whenever experience indicated that an adjustment was required;

(6) A minimum size limit of 26 inches total length, or optionally an equivalent weight limit, was to be applied to all chinook or spring salmon caught by troll gear in offshore waters;

(7) The open season for trolling for chinook or spring salmon was to be established as April 15 to October 31 except in California where the season now is more restrictive.

(8) A uniform minimum size limit for silver or coho salmon caught by troll gear in offshore waters was not required at this time;

(9) A uniform closed season for petrale sole extending from December 20 to April 15 of the following year will be established for the trawl fishery beginning with the coming season.

(10) A maximum incidental catch of 3,000 pounds of petrale sole per trip - not to exceed two trips per month - will be authorized for the Oregon, Washington and British Columbia trawl fisheries and California will take such action as necessary to prevent the use of California ports for the purpose of evading regulations applicable in the northern areas.

(11) All other recommendations presented in the reports of the sub-committees, copies of which are appended, were accepted and it was agreed that the agencies concerned should carry out the several recommended studies as soon as possible.

(12) It was agreed to maintain close and continuing liaison between the Pacific Marine Fisheries Commission and the Department of Fisheries in Canada at the technical and administrative levels.

It was agreed that the draft press release, which had been prepared by the press committee, and the precis of the meeting would be reviewed and approved by the chairmen of the Canadian and United States Delegations. A copy of the press release is appended.

The importance of the research programme agreed to by the two Delegations and designed to determine the proper location of the line delimiting offshore waters at the entrance to the Strait of Juan de Fuca based on scientific study of the silver or coho salmon stocks in the area was pointed out and the Conference expressed the hope that the agencies concerned in Canada and the State of Washington would give this project a high priority both from the standpoint of essential funds and personnel.

The chairmen of the Canadian and United States Delegations expressed thanks to their respective advisory groups and to the technical consultants to the Conference for their contribution to the deliberations.

The Conference closed at 5:20 P.M., February 28, 1957.

 APPENDIX NO. 1

LIST OF THOSE ATTENDING THE CONFERENCE

FROM CANADA:

Delegates:

G. R. Clark, Deputy Minister of Fisheries, Ottawa, Canada.

Wm. M. Sprules, Department of Fisheries, Ottawa.

A. J. Whitmore, Department of Fisheries, Vancouver,

C. R. Levelton, Department of Fisheries, Vancouver.

Advisors:

G. T. Brajcich, Fishing Vessel Owners Assn. of British Columbia

J. H. Johnson, Prince Rupert Fishermen's Cooperative Assn. Prince Rupert.

F. Probert, British Columbia Gillnetters
F. Nolley

James D. Foote, Canadian Consul

H. Stevens, United Fishermen and Allied
W. J. Canic, Workers Union

C. Joe, Native Brotherhood of British Columbia.

J. Cameron, International North Pacific Fisheries Commission

R. Nelson, Fishing Association of
D. F. Miller, British Columbia
S. H. Furney,

R. Stanton, Pacific Trollers

D. J. Milne, Fisheries Research Board
K. S. Ketchen, of Canada, Nanaimo
A.W.H. Needler,

J. L. Kask, Fisheries Research Board of Canada, Ottawa.

FROM THE UNITED STATES:

Delegates:

Wm. C. Herrington, Special Assistant to the Under Secretary of State.

Warren F. Looney, Department of State

W. M. Terry, United States Fish &
John T. Gharrett, Wildlife Service.

R. L. Jones, Chairman, Pacific Marine Fisheries Commission, Oregon.

M. C. James, Director, Oregon Fish Commission

R. S. Croker, Pacific Marine
Eugene D. Bennett, Fisheries Commission,
California.

C. A. Nelson, Puget Sound Gillnetters Assn. Mount Vernon.

J. N. Plancich, Fishermen's Packing Corporation, Anacortes.

N. Mladinich, Purse Seine Vessel Owners Association, Tacoma

M. C. Bell, Acting Director, Washington Dept. of Fisheries

Advisors:

Senator E.A.C. Johnson and
Representative F. P. Belotti, California Legislature

W. O. Riley - all of Pacific Marine Fisheries Commission, California

LIST OF THOSE ATTENDING THE CONFERENCE

FROM THE UNITED STATES:

Advisors:

Senator H. M. Jackson and
Representative C. King, Washington
State Legislature.

Representative W.H. Holmstrom, Chair
and Representative R.G. Elfstrom, mem
Legislative Fish and Game Committee,
Oregon.

F. L. Wright, Pacific Marine Fisher
C. K. Phenicie, Commission, Oregon.

H. J. McCool, Fishermen's Cooperati
R. G. Johnston, Association, Seattle.

H. Lokken, Fishing Vessel Owners
Association, Seattle

N. P. Kuljis, Fishermen's Marketing
Association, Seattle

J. S. Wilkinson, Puget Sound Canners

H. A. O'Neill, Puget Sound Canners
Association of Pacific
Fisheries.

M. Edmunds, Garibaldi, Oregon

J. F. Mijich, Pacific Marine Fisheri
Commission, Seattle.

J. Loman, Puget Sound Gillnetters A

TECHNICAL CONSULTANTS TO THE CONFERENCE:

Robert J. Schoettler, Chairman, International Pacific Salmon Fisheries Commission.

Loyd Royal, Director, International Pacific Salmon Fisheries Commission.

REPORT OF THE SUB-COMMITTEE ON TROLL REGULATIONS

The Committee recommends a 26 inch total length minimum size limit on chinooks in those waters that are considered to be outside waters by the respective jurisdictions. Optional equivalent weight limit would be satisfactory.

In making this recommendation the committee recognizes that biological and practical considerations are both involved and that biological evidence to date from all areas does not indicate that this proposal is essential as a conservation measure. Consequently, the committee recommends further study of the problem.

The committee endorses the principle of setting aside nursery areas for silvers and chinooks for specific time intervals as the necessity is determined by study of local conditions.

The committee considered minimum size limits on silvers and concluded that there is no necessity for uniform size limits at this time.

REPORT OF SUB-COMMITTEE ... LINE REGULATIONS

It is recommended:-

1. That a uniform closed season from December 20 to April 15 for petrale sole be established.

2. That a maximum incidental catch of 3,000 pounds of petrale per trip not to exceed 2 trips per month be permitted in Oregon, Washington and British Columbia. California to take such action as necessary to prevent the use of their ports for the purpose of evading regulations in northern areas.

3. That both countries institute studies looking toward further protection of petrale sole and of the other species taken in the otter trawl fishery in international waters.

4. That both countries institute studies looking toward the establish... of uniform trawl mesh sizes so as to eliminate as far as possible ... catching of undersized fish.

5. That both countries institute studies looking toward the establish... of a uniform minimum size for lingcod in the two countries.

6. That no recommendation is made on a closed season on black cod as at present season has not demonstrated that it is of value from the standpoint of conservation and for this reason may be abandoned.

7. That the present state of the otter trawl fishery clearly demonst... the need for procedures which will enable the two countries to collaborate informally in the formulation of regulations which are uniform as far as uniformity is desirable and necessary.

REPORT OF THE SUB-COMMITTEE ON THE LOCATION OF THE LINE DELIMITING OFFSHORE WATERS AT THE ENTRANCE TO THE STRAIT OF JUAN DE FUCA

It is recommended that the Bonilla-Tatoosh line be provisionally adopted, provided that scientific investigations and statistical studies be undertaken to develop further knowledge as to the following:

(1) Determination of the composition of the Swiftsure stock of silver or coho salmon compared with that of stocks occurring inside the Bonilla-Tatoosh line east to the Sail Rock-Owen Point line or farther east as might appear necessary and desirable during various summer months.

(2) Evidence of maturity of silver or coho salmon in the study area.

(3) Determination of the timing and extent of eastward migration of feeding silver or coho salmon in the Strait of Juan de Fuca.

Further it is recommended that the necessary research programme be designed to cover a ten-year period and that the results of the research be reviewed at the end of that time by the interested agencies in order that the location of the provisionally adopted line may be reconsidered in the light of new knowledge.

It is recommended that the research undertaken be co-ordinated with that of other agencies, particularly with reference to tagging or marking programmes, whenever practicable.

NEWS RELEASE: -

March 1, 1957.

AGREEMENT REACHED ON U.S.-CANADIAN FISHERY REGULATIONS

United States and Canadian conferees today recommended coordinated regulations in the oceanic salmon and certain other fisheries in the Pacific Ocean. Nets in off-shore salmon fishing will not be permitted. The spring or chinook salmon troll fishing season will open not earlier than April 15 and will close October 31. The June 15 opening date on trolling for silvers or cohos will remain unchanged. Troll-caught chinook salmon will be required to be 26 inches minimum length or an equivalent minimum weight. In the petrale sole fishery, a uniform closed season from December 20th to April 15 will be established.

At present Canada does not have seasons for troll-caught chinooks or a minimum length regulation, or a season on petrale sole. The coast states this year have set an April 15 opening date for troll-caught chinook landings, and closed the petrale fishery from February 1 through April 15. Some net fishing for salmon has been carried out on the high seas exterior to the Strait of Juan de Fuca. In 1955 a gill-net fishery in "outside" waters began to develop.

Washington, Oregon and California are moving the needed laws through the current Legislatures. Canada can put into effect by administrative action such regulations as are necessary. It is planned that this coordinated system of regulations will take effect in the three states and Canada in time for the coming fishing seasons. Failure of action in any one of the four jurisdictions may jeopardize the entire program.

The meeting represents a long step forward in securing coordination of regulations to conserve Pacific Coast fisheries. Hitherto, the measures of Washington, Oregon and California have been coordinated through the Pacific Marine Fisheries Commission. The recommendations of the conference when approved by the Legislatures and administrative action taken by Canada will mean that regulations along the entire Pacific Coast will be coordinated.

The meetings, which were held in the Salmon Bay Regional Office of the Washington Department of Fisheries, were attended by officials from Washington, D. C., Ottawa, members of the Legislatures and officials of the Pacific Coast states, as well as commissioners of the Pacific Marine Fisheries Commission and advisors from industry.

The recent growth of net salmon fishery threatened existing United States and Canadian salmon conservation programs. Such fishing already is forbidden in waters off the coast of Alaska by order of the Secretary of the Interior.

The conference also took note of a special problem which exists in the area adjacent to the Bonilla Point-Tatoosh Island line at the entrance to the Strait of Juan de Fuca, and agreed that mutual scientific studies would be inaugurated by Canada and the State of Washington in these waters.

Finally, arrangements on procedures for continued international review of coordinated regulations were reached.

In attendance were Canadian Delegates G. R. Clark, Deputy Minister of Fisheries, Ottawa; Wm. M. Sprules, Department of Fisheries, Ottawa; and from the Department of Fisheries, Vancouver, B. C., A. J. Whitmore and C. R. Levelton.

Canadian Advisors were George T. Brajcich, Fishing Vessel Owners Association of British Columbia; John H. Johnson, Prince Rupert Fishermen's Cooperative Association at Prince Rupert; F. Probert and F. Rolley of British Columbia Gillnetters; James D. Foote, Canadian Consul; Homer Stevens and Mike J. Canic of United Fishermen and Allied Workers Union; Clarence Joe, Native Brotherhood of British Columbia; J. Cameron, International North Pacific Fisheries Commission; H. Nelson, D. F. Miller and S. R. Furney of Fishing Association of British Columbia; H. Stanton of Pacific Trollers; D. J. Milne, K. S. Ketchen and A. W. H. Needler, Fisheries Research Board of Canada, Nanaimo; and J. L. Kask, Fisheries Research Board of Canada, Ottawa.

The United States Delegates were Wm. G. Herrington, Special Assistant to the Under Secretary of State; Warren F. Looney, Department of State; W. M. Terry and John T. Gharrett of United States Fish and Wildlife Service; M. C. Jones, Director, Oregon Fish Commission; R. L. Jones, Chairman, Pacific Marine Fisheries Commission, Oregon; Richard S. Croker and Eugene D. Bennett of Pacific Marine Fisheries Commission, California; Carl A. Nelson, Puget Sound Gillnetters Association, Mount Vernon; John N. Pianich, Fishermen's Packing Corporation, Anacortes; Nick Gladinich, Purse Seine Vessel Owners Association, Tacoma; and Mile C. Bell, Acting Director, Washington Department of Fisheries.

United States Advisors were Senator H. A. C. Johnson, Representative P. P. Pelotti, California Legislature, and W. O. Riley, all of Pacific Marine Fisheries Commission, California; Senator H. N. "Barney" Jackson and Representative Chet King of the Washington State Legislature; Representative Wm. F. Holmstrom, Chairman and Representative Robert G. Klistron, member of Legislative Fish and Game Committee, Oregon; Floyd L. Wright and Charles K. Thomicle of Pacific Marine Fisheries Commission, Oregon; H. J. McCool and Bert C. Johnston, Fishermen's Cooperative Association, Seattle; Harold Lokken, Fishing Vessel Owners Association, Seattle; J. Lonan, Puget Sound Gillnetters Association; Nick P. Kuljis, Fishermen's Marketing Association, Seattle; John S. Wilkinson, Puget Sound Canners; Harold A. O'Neill, Puget Sound Salmon Canners, Inc., Association of Pacific Fisheries; Mark Edwards of Garibaldi, Oregon; and Joseph T. Mijich, Pacific Marine Fisheries Commission, Seattle.

Attending as observers were Loyd A. Royal of New Westminster, B. C and Robert J. Schoettler, Seattle, both representing International Pacific Salmon Fisheries Commission.

State--FD--Wash.D.C.

Copy

[illegible]

[illegible]

In sending you the [illegible] above Coast Survey [illegible] reference to [illegible] showing the [illegible] of the waters of Alaska.

In order to complete the [illegible] appreciate receiving the [illegible] possible, it would also be most [illegible] we have decided that it [illegible] our just receiving [illegible]

Yours very truly,

O. J. Clark
Deputy Librarian

DX IE 5

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Wm. C. Herrington DATE: August 29, 1957

FROM : Warren F. Looney WFL

SUBJECT: PS&GS Charts of Waters of Alaska for transmittal to Canada

From the attached memorandum from Mr. Suomela of August 27 you will see that the charts are here and ready for transmittal.

However, I call your attention to the rather unfortunate title of the overlays, the "Prepared base line from which to Measure the Three-Mile Limit for Fishery Regulations".

Memorandums, Warren F. Looney to Wm. C. Herrington, August 29, 1957; September 6, 1957.

863-731 O - 75 - 34

Mr. Herrington September 6, 1957

Mr. Looney

Charts for George Clark re Alaska Waters.

In talking with Mr. Terry, he agrees that the title of the F&WS charts is bad. The solution he offers is that we cut off the title and paste on a new one. The new one would have reference to one or two sections of Alaska fishery regulations. In other words, the reader could see where the line of demarcation is only by using the chart in conjunction with the Alaska fishery regulations.

This, however, is not only an irrational way of giving a chart to a foreign country but it does not answer Clark's request. Clark's request (attached) is for "a chart showing the definitive lines of the seaward limits of the waters of Alaska". Our request of Fish and Wildlife Service was precisely the same.

It appears that there will be considerable work in correcting these charts in almost any way. Since considerable time has passed and Clark is apparently eager to get them, I suggest we sit down and figure out the most expeditious way we can rectify this.

Enclosure:

Correspondence re charts.

U/FW:rFLooney:aa

3447

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Herrington DATE: September 6, 1957

FROM : Mr. Looney WFL

SUBJECT: Charts for George Clark re Alaska Waters.

In talking with Mr. Terry, he agrees that the title of the F&WS charts is bad. The solution he offers is that we cut off the title and paste on a new one. The new one would have reference to one or two sections of Alaska fishery regulations. In other words, the reader could see where the line of demarcation is only by using the chart in conjunction with the Alaska fishery regulations.

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Enclosure:

Correspondence re charts.

U/FW:rFLooney:aa

DX IE 7

FOREIGN SERVICE DESPATCH

611.0426/10-

EMBASSY OTTAWA

341

THE DEPARTMENT OF STATE, WASHINGTON.

October 8, 1958

Department's A-90, September 27, 1957. OCT 9 - 1958

SUBJECT: OCCURRENCE OF CANADIAN ENFORCEMENT OF FISHERIES REGARDING REGULATION OF FISHING OFF ALASKA.

The Department's A-90 of September 27, 1957 requested the Embassy to forward to Mr. G. H. Clark, Deputy Minister of the Canadian Department of Fisheries, copies of certain legislation, regulations and charts relating to the regulation of salmon fishing in the North Pacific:

1. Public Law 85-114, approved July 24, 1957,

2. Regulations issued by the Secretary of the Interior on July 25, 1957, and

3. Charts of the North Pacific Ocean off Alaska showing lines upon which the area of the regulation of July 25, 1957 is based.

Enclosed is a copy of a self-explanatory letter dated October 7, 1958, which the Embassy received from the Department of External Affairs expressing the desire of the Canadian Department of Fisheries to have a discussion at the earliest opportunity with appropriate United States officials as to the question of the American offshore fishing off Alaska.

Action Requested: The Department is requested to supply the Embassy with any comment on which a reply may be based to the Department of External Affairs for the Department of Fisheries.

FOR THE CHARGE D'AFFAIRES A.I.:

Dolmar R. Carlson
Second Secretary of Embassy

Enclosure:
Copy of letter dated October 7, 1958.

cc: BNA

DRCarlson/mm

UNCLASSIFIED

ACTION COPY — DEPARTMENT OF STATE

The action office must return this [illegible] to DC/R Files with an endorsement of action taken.

IE-7

Foreign Service Despatch, Embassy Ottawa, from Dolmar R. Carlson, Second Secretary of Embassy, dated October 8, 1958.

DX IE 8

[illegible]

SUBJECT: Proposed Canadian Discussions of North Pacific [illegible]

TO: The American Embassy, OTTAWA

The Embassy's Despatch No. 341 of October 8, 1958, forwarded a letter from the Department of External Affairs expressing the desire to discuss with United States officials the question of American off-shore fishing, especially in connection with the alleged seizure of the Miss Dellwood off-shore vessel [illegible] of the Puca.

The Embassy is requested to acknowledge the receipt of the Department of External Affairs letter, state that the matter will be given consideration by the interested [illegible] of the Government and that a further reply will be forwarded [illegible].

DRAFTED BY: [illegible]

CLEARANCES:

[illegible]

[illegible] (Interior)
Mr. Wright (Mine)

Department of State Instruction 2808, Unclassified, TO: The American Embassy, Ottawa, from Dulles dated October 31, 1958.

DX IE 9

DEPARTMENT OF STATE INSTRUCTION

UNCLASSIFIED
(Security Classification)

FOR OC USE ONLY

NO.: A - 293, January 16, 1959

SUBJECT: Reply to Canadian Government Regarding Proposed Discussions on Pacific Coast Fishery Matters

611.42 / 1-1658

TO: The American Embassy, OTTAWA

Reference is made to the Embassy's Despatch No. 341 of October 8, 1958 and to the Department's A-129 of October 31, 1958 regarding the Canadian desire to discuss with United States officials the location of Alaskan off-shore fishing boundaries, possibly in connection with discussion of the lines delimiting off-shore waters across the Strait of Juan de Fuca. The Embassy is requested to prepare and forward to the Department of External Affairs, in reply to its letter of October 7, 1958, an appropriate communication incorporating the substance of the following:

"The United States Government is quite agreeable to the Canadian Government's suggestion that discussions be held between representatives of the two Governments regarding the location of certain Alaskan off-shore fishing boundaries. The United States also agrees that a convenient occasion for such discussions would be afforded by a meeting early in 1959 to review the results of research and to reconsider in the light of scientific findings the lines delimiting off-shore waters across the Strait of Juan de Fuca (Bonilla Point - Tatoosh Island line). It is recognized that the Conference on Coordination of Fisheries Regulations between Canada and the United States, held in February 1957, made provision for such a review at the end of two years.

"In addition to those two matters, however, it would appear that such a meeting would provide the opportunity for profitable consideration of other Pacific Coast fisheries questions of mutual interest to the two Governments. Specifically, the United States would desire to have the meeting consider, as a continuation of the work of the 1957 Conference on Coordination of Fisheries Regulations, the situation with respect to salmon troll fishing. In addition, it is proposed that the occasion be used for an exchange of views regarding the heavy run of Fraser River sockeye salmon through Johnstone Strait in 1958 and the substantial catch in that area, and the effect of such developments on the operations of the International

UNCLASSIFIED
(Security Classification)

DRAFTED BY: U/[illegible]low:ss 1/13/59 | APPROVED BY: William C. Herrington

CLEARANCES: ENA [illegible] S/S [illegible] (Mr. Parker) L/T [illegible] I/IIR [illegible] FWS/I (Interior) Mr. Terry L/SF Mr. Yingling (called)

U.S. DOCUMENT MUST BE RETURNED TO RMB CENTRAL FILES

611.42/1-1658

Department of State Instruction 1136, Unclassified, To: The American Embassy, Ottawa, from Dulles, dated January 16, 1959.

UNCLASSIFIED
(Security Classification)

International North Pacific Salmon Commission under the Sockeye Salmon Convention and on the division of the catch.

"The United States suggests that a conference to consider the four questions mentioned might be held at Seattle, Washington from March 24 through March 27, 1959."

"It is hoped that the suggested time and place of the conference, as well as the proposed additions to the agenda, will meet the approval of the Canadian Government."

DULLES

UNCLASSIFIED
(Security Classification)

(Copy - Original Illegible)

DX IE 10

December 29, 1959

Dear Mr. Clark:

Thank you for your letter of December 8, 1959 regarding the Summary of Proceedings of the Second Conference on Coordination of Fisheries Regulations between Canada and the United States held in Vancouver, B. C. April 21-24, 1959.

We received some days ago the package containing 150 copies of this document. The content of the document is quite acceptable to us, and for our part there are no changes which need be made.

Sincerely yours,

Wm. C. Harrington
Special Assistant
for Fisheries and Wildlife
to the Under Secretary

Mr. G. R. Clark,
Deputy Minister of Fisheries,
Department of Fisheries,
Ottawa, Canada.

Clearances: BNA F&WS(Interior) Mr. Terry

U/FW:SBlow:jd 12/23/59.

Letter, Wm. C. Harrington to G. R. Clark, Deputy Minister of Fisheries, Ottawa, Canada, - December 29, 1959.

(Copy - Original Illegible)

DX II

S
ACTION
Assigned to
U/FW

THE SECRETARY OF THE INTERIOR
WASHINGTON

April 25, 1962

Dear Dean:

I know you share my concern that incidents such as the recent dispute between the State of Alaska and Japanese fishermen in the Shelikof Straits might jeopardize our friendly relations with the Japanese people and their government. One of the ironical things about this conflict is that if the logical development occurs Alaska should become the principal source of raw materials for Japan.

I am convinced that the best way to avoid a repetition of this incident is for the United States to formulate a position soundly based on law and to communicate it to Japan and to the Governor of Alaska. It would be my thought that the President might direct your Department and my own to work jointly to ascertain the pertinent facts and define such international waters as may exist in the Aleutian Archipelago.

Handled properly, this should prevent further disputes of this kind, particularly if we were to take the further step of urging the government of Japan to advise us in advance when Japanese fishing fleets plan to enter such straits and to inform us concerning the duration and purpose of their fishing missions.

On the basis of my insights into the political situation in Alaska, it is clearly predictable that further incidents will occur unless we act.

Sincerely yours,

Secretary of the Interior

Honorable Dean Rusk
The Secretary of State
Washington, D. C.

(2) 405145

4-26-62

611.022
XR

Letter, Secretary of the Interior to Dean Rusk, Secretary of State, dated April 25, 1962.

BEST COPY AVAILABLE

(21)

FW/R

FILE

s/s. 6715

May 5 1962

Dear Bob:

894.245/4-1862

Many thanks for your letter of April 11 transmitting a translation of a Japanese newspaper article on fishing for herring in the area of the Shelikof Strait.

We intend to remain in close and continuing communication with Governor Egan and the Alaska delegation in Congress regarding the problem raised by the Japanese fishing operation in Shelikof Strait as well as the whole range of fisheries matters which are of concern both to the State and the Federal Government.

This is particularly important with regard not only to the issue of internal waters, but also to the future of the North Pacific Fisheries Convention. It is this Convention which governs the activities of Japan and other countries in fishing North Pacific waters. Two years ago, by agreement of the parties to this convention, herring was removed from the list governed by restrictions under this treaty, since it was considered not to qualify for application of the "abstention" principle. In other words, the herring stock was not considered to be fully utilized, and there were not in force measures of herring conservation which would be disturbed by additional fishing for herring.

The Convention now regulates through restrictions fishing of the commercially important salmon and halibut in the North Pacific. Although the Convention is of indefinite duration, it is subject to termination by any party after an initial period of ten years. That period expires in June 1963. In the next year, therefore, we may be faced with renegotiation should some member feel that its interests would be served thereby.

I know

The Honorable
E. L. Bartlett,
United States Senate.

(1)

L:LCMecker
U:GSpringsteen:jcd

Letter, George W. Ball, Acting Secretary, to E. L. Bartlett, dated May 5, 1962.

- 2 -

I know that you as well as Governor Egan will wish to follow closely developments affecting the life of this Convention, and we will seek to keep you advised.

Yours ever,

/s/ George W. Ball

Acting Secretary

S/S-RO

A true copy of signed original

L:LCMecker
U:GSpringsteen:jcd
4/25/62
Retyped in S/S-Saeh
5/2 (page two only)

(For initials see attached blue)

United States Senate
COMMITTEE ON COMMERCE

ACTION
is assigned to

April 18, 1962

Honorable George W. Ball
Under Secretary of State
Washington 25, D. C.

Dear Mr. Secretary:

Attached is copy of a news article which appeared in a Tokyo newspaper on April 5, which I know you will find most interesting. As noted at the top of this copy, the article was translated at Kodiak, Alaska.

I wish to call to your attention particularly the third paragraph of the story in which it is stated that one purpose the Japanese government had in sending this fleet into Shelikof Strait was to establish historical fishing rights there.

Sincerely yours,

E. L. Bartlett

LEGAL ADVISER
To [illegible]
APR 19 62
Ltr. Memo. File
DEPARTMENT OF STATE

Encl
484660
4-19-62

APR 20 1962

Letter, E. L. Bartlett to George W. Ball, dated April 18, 1962, with attachment: Copy of a news article, Tokyo Newspaper.

Translated at Kodiak, Alaska, from Japanese newspaper.

NEWS CONCERNING DEVELOPMENTS IN THE JAPANESE FISHING INDUSTRY JAPANESE FISHING FOR HERRING IN SHELIKOF WATERS

Kodiak, April 5, 1962. SUISAN KEIZAI SHIMBUN, April 5, reports that a Japanese fishing fleet has begun to fish for herring in the waters south of the Alaska Peninsula. This information was made public by the Japanese Fisheries Agency on April 4. The Japanese fleet is identified as the No. 31 Nanshu Maru fleet operated by the Eastern Pacific Fisheries Company which is affiliated with the Taiyo Fishing Company.

According to the SUISAN KEIZAI SHIMBUN, the Nanshu Maru fleet consisting of a mother ship, "Nanshu Maru", 15,000 gross tons and four fishing vessels, two of which are purse seine vessels, are fishing for mature herring in the Shelikof Strait, which lies between Kodiak Island and the Alaska Peninsula. Production objective of the fleet is 3,000 metric tons of highly priced herring roe, of which there is a tremendous shortage. Price of this product in Japan is quoted at ¥2,770,000 per metric ton in United States dollars.

Japan is known to have informed the United States and Canada of this experimental fishing operation inasmuch as Japanese fishing operations south of the Alaska Peninsula have the prospect of great controversy within the International North Pacific Fisheries Commission. Reportedly, the Fisheries Agency plans to gradually redeploy other Japanese fleets to catch herring fleets after the experimental fishing is completed in the Shelikof area. Japan has given one purpose being to establish historical rights. Also, the Agency plans to give some of the [illegible] to the condition of high seas [illegible] made in rulemaking proceedings in these waters.

Alaska state authorities are reported to have misgivings on [illegible] has been a violation of [illegible] and foreign fishermen in the Kodiak area are reported to be greatly disturbed over the Japanese operations. However, Japan takes the view that the United States at the narrowest point is 24 miles wide, the average being

about 30 miles, and that Japanese operations can be conducted in that area without violating American territorial waters. Also, herring has been taken off the list of fish stocks qualifying for abstention. Furthermore, halibut cannot be taken incidentally to herring since purse seines are being used to catch the nature herring. However, the herring migrate into shore to spawn and so Japanese fishing vessels are fishing close to shore. American fishermen will likely become excited to find foreign fishing vessels fishing off their coast and Japan will face the problem of making the United States understand the situation.

* * * * *

INCOMING TELEGRAM **Department of State** PERMANENT RECORD COPY

Treasury Dept. 2701262 894.245/5-2762

33-L Action — UNCLASSIFIED — Control 19777 Rec'd: MAY 27, 962 12:22 AM

UFW Info

FROM: CCGDSEVENTEEN

SS SR G L H FE E P USIA INR

TO: Secretary of State

NO: 2701262 MAY (COAST GUARD MESSAGE)

PRIORITY

ACTION COMDT COGARD, INFORMATION COMWESTAREA, COMALSEAFRON, COAIRDET KODIAK, DEPARTMENT OF JUSTIC, CNO, BUREAU OF COMMERCIAL FISHERIES, STATE DEPARTMENT.

ENR

TO CCS

1. THE FOLLOWING TELEGRAMS ARE QUOTED FOR YOUR INFORMATION AND FOR DISSEMINATION TO THE U.S. DEPARTMENT OF STATE. COPIES OF THESE TELEGRAMS WERE RECEIVED FROM THE GOVERNOR OF ALASKA.

2. THE FIRST TELEGRAM IS FROM THE JAPANESE VESSEL BANSHU MARU NO 31. QUOTE. THE HONORABLE WILLIAM A EGAN GOVERNOR OF ALASKA JUNEAU ALASKA. SINCE REACHING FISHING GROUNDS ON MARCH 24 WE HAVE CONTINUED OPERATION IN FACE OF INSURMOUNTABLE ODDS BUT WITHOUT ANY CATCH WHATEVER TO DATE STOP KNOWING WHAT HUGE LOSS THE COMPANY WILL INCUR FROM SUCH COMPLETE FAILURE OF OUR EXPEDITION HOW CAN WE AS FISHERMEN GO HOME WITH ALL BOATS EMPTY STOP ACCORDING TO SPAWN INSIDE SHELIKOF STRAIT STOP HERRING WITH ROE BEING OF SOLE OBJECTIVE WE REQUEST YOUR SPECIAL DISPENSATION PERMITTING US TO OPERATE WITHIN SHELIKOF STRAIT FOR PERIOD OF THREE WEEKS. BANSHU MARU 31 FISHING FLEET COMMANDER YAMAKI HISAO. UNQUOTE.

3. THE SECOND TELEGRAM IS THE GOVERNOR'S REPLY. QUOTE. BANSHU MARU NUMBER 31 ATTENTION FISHING FLEET COMMANDER. THANK YOU FOR YOUR RADIOGRAM. REGRET THAT IT IS IMPOSSIBLE

Drafted by [illegible]

• This copy must be returned to PA/C CLASSIFIED with no REPRODUCTION FROM THIS COPY IS RESTRICTED UNLESS UNCLASSIFIED

ACTION ASSIGNED TO		ACTION TAKEN	Noted
NAME OF OFFICER & OFFICE SYMBOL	UFW - JDKnoi	DATE OF ACTION	5/29/62
		DIRECTIONS TO AM/D	File

Telegram, Addressed to Secretary of State, dated May 27, 1962.

UNCLASSIFIED

-2- 270126Z MAY (COAST GUARD MESSAGE) FROM CCGDSEV. TEEN

FOR ME TO GRANT PERMISSION FOR YOUR FLEET TO FISH IN ALASKA WATERS. THE CASE IS BEFORE THE STATE SUPERIOR COURT BUT EVEN IF SUCH WERE NOT TRUE, I COULD NOT GRANT SUCH AUTHORITY TO UNLICENSED FISHERMEN AND FOR THE USE OF UNLICENSED GEAR. THE SHELIKOF WATERS ARE INLAND WATERS OF THE UNITED STATES AND ALASKA. THE HISTORIC USE AND THE HISTORIC REGULATORY RECORDS SPEAK FOR THEMSELVES. IT IS UNDOUBTEDLY TRUE THAT YOUR COMPANY WILL INCUR CONSIDERABLE FINANCIAL LOSS BECAUSE OF THEIR UNFORTUNATE PLANS TO CONDUCT A FISHERY IN ALASKA WATERS BUT IF THE STATE OF ALASKA PERMITTED DISCRIMINATION YOU REQUEST, THE EVENTUAL RESULT COULD VERY WELL BRING ECONOMIC CATASTROPHE FOR ALASKA'S GROWING SEA PRODUCTS INDUSTRY AND A DIMINISHING OF ALL CATEGORIES OF FISHERIES RESOURCES TO THE POINT WHERE THESE VALUABLE RESOURCES WOULD BE NON-EXISTENT. THE STATE OF ALASKA BEARS NO ILL WILL TOWARD THE OFFICERS AND FISHERMEN OF YOUR FLEET AND THE STATE OF ALASKA ALSO SHARES THE RESPECT AND ADMIRATION WHICH OUR UNITED STATES GOVERNMENT HAS FOR YOUR NATION. THE STATE OF ALASKA MERELY URGES THAT YOUR FISHING COMPANIES USE REASONABLE DISCRETION AS TO LOCATIONS OF NORTH PACIFIC FISHERIES EFFORTS. AS GOVERNOR, I WANT TO EXPRESS MY APPRECIATION OF THE CONVINCING ATTENTION AND KINDNESSES YOUR PEOPLE EXTENDED TO SERGEANT WILLIAMS OF THE ALASKA STATE POLICE AFTER SERGEANT WILLIAMS BROKE HIS LEG BOARDING ONE OF YOUR VESSELS. WILLIAM A EGAN GOVERNOR OF ALASKA. UNQUOTE.

NOTE: Mr. Sullivan (CNW) & PE informed 5/27/62 CWO-JRL.

UNCLASSIFIED

DEPARTMENT OF STATE
THE LEGAL ADVISER

May 29, 1962

MEMORANDUM

TO: EA - Mr. Leonard L. Bacon

FROM: L/SFP - Raymund T. Yingling

As you are aware, the note of May 3, 1962, from the Japanese Embassy, protesting the seizure of Japanese fishing boats off the coast of Alaska, has not been answered. Although this office does not appear to have the original of the note, it is assumed, in view of its subject matter, that the answer should be prepared here. This we are prepared to do provided your office sees no objection from a policy standpoint. While there was probably some virtue in permitting the matter to quiet down before a reply was sent, we do not think that a reply can be deferred indefinitely and, therefore, unless we hear to the contrary from you, I will proceed to draft a reply along the following general lines.

1) Shelikof Strait.

Concerning the status of Shelikof Strait, the note will indicate that this Government does not regard it as an inland waterway on historic grounds but considers that the waters of this Strait outside the three-mile belt along the mainland and around Kodiak Island are high seas.

2) Closing line of bays.

The note will indicate that in view of its ratification of the Convention on the Territorial Sea and the Contiguous Zone, this Government no longer follows the ten-mile rule but regards closing lines up to a limit of twenty-four miles as legal.

3) Position of vessels.

While the Department agrees that seizure of the Japanese fishing vessels on the high seas would not have been warranted, the matter of their seizure is before the courts of Alaska, and the Department does not consider it proper to take a position as to whether the vessels were seized on the high seas or within the jurisdiction of Alaska until the courts have acted. However, on the basis of information presently available, it appears that the vessels may have been within territorial waters.

4)

Memorandum, Raymond T. Yingling to Leonard L. Bacon, dated May 29, 1962

569-731 O - 75 - 35

4) Binding effect of Agreement between Alaska and East Pacific Fisheries Company.

The Department agrees that this agreement does not commit the Government of Japan as to future fishing activities of Japanese nationals.

5) Extent of territorial sea.

The Department agrees with the Government of Japan that the extent of the territorial sea is a question of international law and not for unilateral determination of coastal State. Since both the United States and Japan adhere to the three-mile limit, there is no difference of view as to the breadth of the territorial sea.

L:L/SFP:RTVingling:edk

The Secretary of State presents his compliments to His Excellency the Ambassador of Japan and has the honor to refer to the latter's note No. 93 of May 3, 1962, concerning the recent incident involving Japanese fishing boats in the Shelikof Strait between the Alaska Peninsula and Kodiak Island.

As the Government of Japan is aware, the matter of the seizure of the Japanese fishing boats is now before the courts of the State of Alaska. The Department agrees that the jurisdiction of these courts depends on whether, under international law, the vessels were seized on the high seas or within the territorial jurisdiction of the State of Alaska. A decision on this point necessarily involves determination of questions of fact as well as of law, that is, the precise positions of the vessels when seized, as well as the interpretation of the provisions and rules of law applicable to the facts of the case. On the information presently available to the Department, it appears that the vessels may have been within the State's territorial waters. But until the courts have acted to establish the facts, the Department does not consider it proper to take/

Dft: L/L: LLBreau

L
EA
FE
Interior

4/FW

Department of State statement, dated June 19, 1962.

to take a position as to whether the vessels were seized within the jurisdiction of the State of Alaska, or on the high seas.

The points raised in the various numbered paragraphs of His Excellency's note are under study in the appropriate departments of the Government of the United States, but in view of the considerations noted above, it is desired to respond to them at a later time.

Department of State,

Washington, June 19, 1962

FE:EAsilla:cen:6/13/62

Clearances: L - Mr. Ying
EA - Mr. Yager
FE - Mr. Ricca
Interior - Mr. Terry (draft)

S/S C
JUN 19 1962

U/FW - Mr. Herrington (draft)
O - Mr. Jakosky

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
WASHINGTON 25, D. C.

U/FW
SEP 12 1962

September 7, 1962.

Mr. William C. Herrington
Special Assistant for Fisheries and
Wildlife to the Under Secretary
Department of State
Washington 25, D. C.

Dear Mr. Herrington:

I have reviewed the report on the statement made by Mr. Ito at the meeting of the North Pacific Fisheries Commission with respect to Shelikof Strait, which you transmitted with your memorandum of August 22, and I have no corrections, additions, or deletions to offer.

Sincerely yours,

Clarence F. Pautzke
U. S. Commissioner
International North Pacific Fisheries Commission

Letter, Clarence F. Pautzke, U. S. Commissioner, to William C. Herrington, dated September 7, 1962, with attachment: Meeting of International North Pacific Fisheries Commission, Honolulu, August 16, 1962.

CONFIDENTIAL

Meeting of International North Pacific Fisheries Commission
Honolulu, August 16, 1962

Mr. Ito, Director of the Fishery Agency of Japan, made the following statement in substance directed to the U.S. Government members of the Commission:

The Japanese Government greatly regrets the incident developing from the arrest of Japanese fishing boats in Shelikof Strait. The Japanese Government has attempted to cooperate with the Governments of the United States and Canada in the handling of North Pacific fisheries problems and feels that incidents such as this are not consistent with that cooperation.

The stocks of herring off the United States coast of the Gulf of Alaska were removed from the abstention list May 24, 1961. Following this Japanese fishermen were licensed to fish herring in this area; then occurred the unfortunate incident. If these vessels violated the territorial waters of the United States the Japanese Government will convey its apologies and will take appropriate action to impose penalties. However, if it is found that the boats were outside United States territorial waters then the Japanese Government will ask for compensation for all losses involved.

The Japanese Government is convinced that the incident was on the high seas and that the waters of Shelikof Strait are high seas. The Japanese Government knows that vessels of the USSR have operated in the same Strait. The Japanese Government and the Japanese people ask the United States Government to take quick action in resolving the matter.

Mr. Herrington replied that the problem to which Mr. Ito referred now was the subject of an exchange of notes between his Government and the Government of Japan; therefore he could add little more than had already been said. In the United States our State Governments have jurisdiction over fishing in United States waters off their coasts. Consequently, if the Japanese boats were within such jurisdictional waters the State of Alaska had authority to enforce the laws in this area. The important consideration in the case was the exact location of the vessels when they were arrested and this matter is being determined.

Mr. Ito

Mr. Ito again pressed the matter, particularly requesting that action be expedited, implying that he could not see any reason for delay and that the question involved was whether or not the waters of Shelikof Strait were international. Mr. Herrington commented that the Japanese vessels were seeking roe herring and that the habits of Alaska herring were somewhat different than those in some other areas of the world, that spawning was inshore on the beach and rocks. He had further heard that the Japanese fishermen in their eagerness to obtain access to these roe herring had come somewhat closer to the beach than perhaps had been intended. He stated that he would bring Mr. Ito's statement to the attention of the United States Government. If Mr. Ito wished further details on this he would be happy to arrange for him to talk with the State Department's legal people who were handling this matter. Mr. Ito finally remarked that he looked forward to conclusion of the matter as soon as practicable.

Mr. Herrington also stated that the United States Government had no information regarding Soviet boats fishing in Shelikof Strait. If the Japanese Government had factual information on this matter the United States Government would be most happy to receive it. Mr. Ito replied that the matter had been reported in a Russian publication and he would provide Mr. Herrington with the reference. (Up to the present he has not done so.)

U/IFW:WCHerrington:er 8/22/62

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DX IJ

STATEMENT

JAPANESE FISHING VESSELS - KODIAK - SHELIKOF STRAITS

The first knowledge I had of a Japanese fishery in the Kodiak area was on Thursday, March 29, 1962. Fish and Wildlife Service Agent, John Klingbiel, informed me that the Japanese were off Chiniak Point about 10 miles. The Fish and Game vessel, S/V HIGBEE, was on her way to Ugak Bay to drop some men on an egg take program and had to go via Chiniak to get there on this same date. We called the S/V HIGBEE on the radio, and Lynn Crosby said he had seen a schooner type vessel earlier that day, but as he approached, it turned back out to sea.

Our next word from the Japanese was Saturday, March 31, about 9:10 A.M., when Al Crotty, A Kodiak Airways Pilot, spotted the Mother Ship and five catcher boats off Seven Mile Beach on the Shelikof Straits. I called Bob Simon and advised him of our problem. Bud Weberg and Buck Stewart arrived in Kodiak on this day taking a big load off my shoulders.

Sunday, April 1, a number of fishermen, coming from Alitak Bay, saw the Japanese in Shelikof as they passed. Slim and his wife, on the vessel RECORA, took pictures of them and Fritz Deveau came along side one to look him over. Bob Simons and Oscar Dyson chartered a plane and flew over the boats in the morning.

Wednesday, April 4, we left Kodiak in the Goose N-710 and headed south on the east side of Kodiak Island. The Mother Ship was the first one we located about 5 miles south of Black Point. A short time after this sighting, we saw a seiner and two smaller

Exhibit "I-J" - Statement - Japanese Fishing Vessels - Kodiak-Shelikof Straits - March and April 1962.

vessels coming from the direction of Kodiak Island. We continued on south toward the Trinity Islands and found two more fishing vessels anchored between the Trinity Islands and Aiaktalik Island.

Around 5:00 P.M. we met the S/V TEAL in Kupreonof Straits and took Ed Martin off and put Tom Richardson and Dan Hennick aboard to catch and observe the gear these vessels were using.

Thursday, April 5, we sighted the Mother Ship south of Ugat Island. The catcher boats, four in number, were inside of the passage of Narrow Cape and clear up by Pasagshak Bay, inside the mouth of Ugat Bay. Dexter Lall and Ed Martin were on this flight with us. Later this day, around 3:15 P.M. we spotted the Mother Ship and the smaller boats heading across from Chiniak Point toward Marmot Island. The Fish and Wildlife Service vessel, JOHN R. MANNING, was approaching the Mother Ship at a north east course from Long Island.

Friday, April 6, we were unable to locate the Japanese however, we know they were somewhere in the Shelikof Straits.

Saturday, April 7, 10:40 A.M. we made contact with the first Japanese fishing vessel off Uganik Island. This boat was closer than three miles and had gear in the water that required buoys and flags. This was our first look at this vessel built like a Coast Guard Buoy Tender. The Mother Ship was further out in the Shelikof Straits. We later on located four other Japanese fishing boats in the Shelikof Straits and off Little River. Three were anchored and one was running around the others. We were unable

to see any fish at this time so we went back to Kodiak. Dexter Lall and Howard Marks were passengers on this flight to observe.

Sunday, April 8, no contact was made with the Japanese.

Monday, April 9, 2:45 P.M. we located the Japanese just outside of Uganik Island. Three of these vessels were traveling north. The Mother Ship was out in the Shilikof drifting. Observers on this flight were George Gray, Tom Richardson, and Gladys Buell.

Tuesday, April 10, 5:15 P.M. the weather was such that N-710 was able to land in the Shelikof Strait and taxi up to the Banshu Maru #31. Buck Stewart and I went aboard to talk to these people. We had difficulty in talking to them and we were there about 45 minutes. While on board, Buck Stewart wrote on a piece of paper for the one who spoke broken English, that Shelikof Straits was State waters. This buck toothed son jabbered among the others about this and we left a short time later. They did tell us we were welcome to return later (which we did). Benny Grotecloss, Don Roberts, and Buck Stewart were the passengers on this flight.

Wednesday, April 11, Bill Valentine and I flew to Port Bailey where we boarded the S/V TEAL and took off to locate the Japanese Fleet. At 9:00 P.M. we located them off Uyak Bay, riding the hook. We went in behind Harvester Island and anchored for the night.

Thursday, April 12, we left Harvester Island and headed out into Shelikof Straits to take pictures of the vessels we had located the night before. At 11:00 A.M. we took our first pictures of the Japanese seiner. Our next contact was the Mother Ship out in the

Shelikof Straits. After takin, these ships we came back toward Uyak Bay and took pictures of the other three vessels. We tied up that evening in Uyak Bay and I was removed from the S/V TEAL about 6:15 P.M. At that time Fred Woldstad was put on in place of me.

Friday, April 13, I contacted the S/V TEAL by radio and was informed that the Japanese had left the area they were in yesterday. They were following a seiner toward Karluk, but the seas were getting tough and they were going to turn back. At 3:15 P.M., while Buck was with us in N-710, we overheaded a Japanese seiner closer than a mile to East Point, between Uganik Passage and Uganik Bay. This vessel was away inside the Bay. Two other Japanese vessels were right outside Uganik Bay, approximately two miles from Noisy Island. At 3:40 P.M. Sueman Moon was dropped off with Buck Stewart on the S/V TEAL, which had moved to Harvester Island to pick up these passengers.

Saturday, April 14, was one of confusion. So many orders were coming in from all sides along with 40 National Guardsmen and several State Policemen. We started flying about 7:00 A.M. to locate the Japanese. Our first sighting was one Japanese catcher boat off Uyak Bay. A short time later we saw three more Japanese vessels about one and one-half miles off Rocky Point, going toward Karluk. When we were on our return trip to Kodiak, we sighted the first small catcher boat anchored up about two miles off Noisy Island. About 7:45 P.M. the S/V TEAL had arrived from Uyak Bay and the S/V WIDGEON came around from Port Bailey and took the

Japanese vessel into custody.

Sunday, April 15, Dave Henley and I left Kodiak in the Champion and were out to check the where abouts of the S/V TEAL. Spotted it and the Japanese Ship coming around Spruce Island, heading toward Kodiak. 9:30 A.M. the S/V TEAL arrived Kodiak and dropped the hook with the first Japanese vessel alongside. Judge Davis arrived in Kodiak, via the National Guard plane at 2:00 P.M. to arraign the Captain of the Banshu Maru #31, and the small catcher boats Captain. Judge Davis left Kodiak at 3:45 P.M. on the National Guard plane for Anchorage. The Federal Health Officer, Lindberg, from Anchorage, came in earlier this date on the Fish and Wildlife Service Goose, flown by Smith. We ended the day by taking a second Japanese boat at 11:44 P.M. some where in the Shelikof Straits. This was the operations that caused State Police Sgt. Jerry Williams to break his leg.

Monday, April 16, we started at 4:00 A.M. to ready the Goose for a flight to Harvester Island, where the Skipper from the Banshu Maru #31 would be placed onboard the S/V WIDGEON and carried back to his ship in the Shelikof to await further development. The S/V WIDGEON and the small Japanese schooner were behind the Island awaiting the Coast Guard plane to take Sgt. Williams back to Kodiak. We, in town, spent the rest of the morning getting supplies and water for the first Japanese boat that arrived in Kodiak. The S/V WIDGEON arrived Kodiak with the second Japanese boat about 11:00 P.M. and we started out by having the Federal Health Officer Woolridge, from Anchorage, check the crew over.

COPY

Tuesday, April 17, 2:00 A.M. the Japanese schooner tied up to the other one in Kodiak Harbor and the S/V WIDGEON moved back into the Small Boat Harbor. 8:00 A.M. picked up the two Captains from the small boats and brought them over for their Attorney to talk with (Peter J. Kalimarides). Court was held with Judge James Fitzgerald presiding later in the day. Nothing much was gained today because Captain Mongo Hanisaki wanted the Fish Commander, from the Mother Ship, to come into court and help him out. We got the message out to the Banshu Maru, via radio contact from one of the small Japanese boats in the Kodiak Small Boat Harbor, and made arrangements for one of the seiners to bring the Fish Commander of this operation into the Kupreanof Straits, where we would meet them.

Wednesday, April 18, 11:00 A.M. we flew to Port Bailey where we took the M/V TEAL, which had been moved to Port Bailey earlier, and went out to meet the Commander. When we returned to Port Bailey the Japanese boat anchored out in the Harbor and we got back in N-710 and flew back to Kodiak so that the hearing could go on. The M/V TEAL was instructed to go back and tie up to the seiner after we (the Commander, Captain of Banshu Maru and myself) left in the plane. The Captain and the Commander stayed this night at the Kodiak Hotel, where the idea was intertained of finishing this hearing the next day.

Thursday, April 19, the two catcher boat Captains were brought over about 8:30 A.M. and before noon the bail for the three Captains was raised and what ever else needing attention was taken care of. I received word to escort the two vessels back to the Shelikof as

soon as I could get under way. The Captain and the Commander from the Banshu Maru were flown back to Port Bailey by Dave Henley and Buck Stewart, where they were put on the Japanese seiner for the return trip to the Mother Ship. The M/V WIDGEON, on which I was stationed, left the two Japanese boats on the other side of Whale Island at 7:10 P.M. and we then headed for home.

O. R. McKinley, Protection Officer
Kodiak, Alaska

COPY

ADF&G SIGHTING

March 31	Time 1100	Mothership and 2 catcher vessels 57° 40' 45" N 154° 10' 30" W. off Rocky Point 1 mile, fish on mothership, crew apparently sorting.
April 1	Time 1430	Mothership 57° 57' 45" N. 153° 43' 15" W. off Uganik, four catchers 57° 43' 10" N., 154° 05' 30" W. off Harvester, catchers fishing.
April 4	Time 1200	Mothership and 3 catchers 56° 54' 15" N. 153° 15' 15" W. off Black Pt., 2 catchers anchored within one mile Cape Sitkinak about noon at 56° 35' N., 153° 52' 30" W.
April 5	Time 1000	Mothership 57° 19' N 152° 24' W off Ugak I. 4 catchers 57° 22' N between Ugak I. and Gull Point apparently scanning with depth sounder.
April 7	Time 1100	Mothership one catcher 57° 57' 45" N., 153° 38' 45" W off Noisy Island. Four catchers 57° 48' 30" N., 153° 59' 30" W off Kuliuk 2 miles. Just pulling anchor.
April 9	Time 1400	Mother 58° 01' 15" N 153° 52' 30" W drifting 3 catchers 58° 00' 00" N 153° 39' 30" W going NE 1 catcher 2 miles behind
April 10	Time 1700	Mothership 58° N. 154° W. 3 catchers 57° 57' N., 153° 42' W. Catchers moving toward mothership
April 11	Time 1205	Mothership 58° N 154° W 2 catchers 57° 43' N 154° 05' W. four men pulli lines over side 2 catchers 57° 57' N 154° 33' W. docks & gear w
April 12	Time 1300	Mothership 57° 45' 15" N 154° 04' 30" W slowly sou 4 catchers 57° 42' N 154° 01' W at anchor. Uyak vicinity.

All locations are approximate, they are aircraft sightings and most of the times are within the nearest hour.

MOTHERSHIP REPORTS TO COAST GUARD

1st	Noon	57° 59' N.	153° 45'W.	drifting
	8 p.m.	57° 56' N.	154° 24' W.	"
2nd	Noon	57° 30' N.	154° 49' W.	speed 8.87
	8 p.m.	56° 53' N.	154° 27' W.	drifting
3rd	Noon	56° 25' N.	155° 02' W.	
	8 p.m.	56° 7' N.	153° 46' W.	
4th	Noon	56° 54' N.	153° 21' W.	
	8 p.m.	56° 51' N.	153° 15' W.	drifting
5th	Noon	57° 19' N.	152° 26' W.	8.27 kn.
	8 p.m.	58° 09' N.	151° 34' W.	7.5 kn.
6th	Noon	58° 52' N.	152° 58' W.	6.88 true course 201°
	8 p.m.	58° 06' N.	153° 39' W.	drifting
7th	Noon	57° 56' N.	154° 01' W.	drifting
	8 p.m.	58° 05' N.	153° 59' W.	"
8th	Noon	57° 57' N.	153° 52' W.	drifting
	8 p.m.	57° 58' N.	153° 45' W.	"
9th	Noon	57° 59' N.	153° 55' W.	drifting
	8 p.m.	58° 00' N.	154° 03' W.	"
10th	Noon	57° 55' N.	154°08' W.	drifting
	8 p.m.			
11th	Noon	57° 57' N.	154° 00' W.	drifting
	8 p.m.	57° 58' N.	154° 06' W.	
12th	Noon	57° 47' N.	154° 09' W.	

DX IO

CANADA

DEPUTY MINISTER OF FISHERIES
OTTAWA

June 25, 1957.

U/TW
JUL 1 1957

Mr. W.C. Herrington
Special Assistant for Fisheries
and Wildlife to the
Under-Secretary of State
Department of State
Washington, D.C.

Dear Mr. Herrington:

Re Seattle Conference on Co-ordination of Fisheries Regulations

In reading over the Summary Proceedings of the above Conference, I note that on page 7, paragraph 4, reference is made to an agreement to submit a chart showing the definitive lines of the seaward limits of the waters of Alaska.

In order to complete our record I would appreciate receiving the chart in question as soon as possible. I would also be most happy if you would let me know whether there is anything we have overlooked on our part required to complete the Agreement.

Yours very truly,

G. R. Clark
Deputy Minister

[redacted]

Exhibit "I-O" -

Letter from G. R. Clark, Deputy Minister of Fisheries Ottawa, Canada to Mr. W. C. Herrington, Special Assistant for Fisheries and Wildlife to the Under-Secretary of State dated June 25, 1957 regarding Seattle Conference on Coordination of Fisheries Regulations.

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NO.: A-105 October 8, 1957

SUBJECT: State and Federal Fishery Legislation

U/FW
OCT 10 1957

TO: The American Embassy, OTTA A

Embassy Despatch No. 93, July 31, 1957.

The Embassy will remember that among other understandings reached at the Seattle Conference on the Coordination of Fishery Regulations between the United States and Canada of February 1957, it was agreed that action would be taken on both sides of the border with respect to net fishing for salmon in the high seas.

There are enclosed the following certificated copies of state statutes in this regard:

1. Chapter 108 of the laws of 1957 of the State of Washington.
2. Chapter 152 Oregon Laws 1957.
3. Chapter 424 of the laws of California of 1957.

There is also enclosed the following Federal legislation on this matter:

1. Public Law 85-114.
2. Regulation of the Secretary of the Interior issued on July 25, 1957 with regard to Part 130 of the Alaska Commercial Fisheries Regulations.

A copy of Public Law 279, 83rd Congress, The North Pacific Fisheries Act of 1954 which P.L. 85-114 amends is also enclosed for information.

The Embassy is requested to forward these documents to Mr. George R. Clark, Deputy Minister of Fisheries of Canada.

DULLES

Enclosures:
1. Chapter 108
2. Chapter 152
3. Chapter 424
4. Public Law 85-114
5. Regulation - Secretary of the Interior
6. Public Law 279.

U/FW
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DRAFTED BY: U/FW [illegible] 10/7/57
APPROVED BY: Wm. C. Herrington
CLEARANCES:
BNA

Exhibit "I-P" - Memorandum from Mr. Dulles, Secretary of State, dated October 8, 1957 to the American Embassy, Ottawa regarding State and Federal Fishery Legislation.

DX IU

Laws and Regulations for Protection of the Commercial Fisheries of Alaska

Definitions of Fisheries Districts:

1941

Sec. 203.1 Definition, Yukon-Kuskokwim area. The Yukon-Kuskokwim area is hereby defined to include all territorial coastal and tributary waters of Alaska from Cape Newenham northward to the parallel of 60 degrees north latitude.

Sec. 204.1 Definition, Bristol Bay area. The Bristol Bay area is hereby defined to include all territorial coastal and tributary waters of Alaska from Cape Newenham to a point on the coast 3 statute miles south of Cape Menshikof.

Sec. 205.1 Definition, Alaska Peninsula area. The Alaska Peninsula area is hereby defined to include all territorial coastal and tributary waters of the Alaska Peninsula from a point on the coast 3 statute miles south of Cape Menshikof on the Bering Sea shore, extending in a southwesterly direction to Unimak Pass, thence in a northeasterly direction along the Pacific side of the Alaska Peninsula to Castle Cape (Tulumnit Point). The waters of Unimak, the Sanak, the Shumagin and all other adjacent islands are included.

Sec. 206.1 Definition, Aleutian Islands area. The Aleutian Islands area is hereby defined to include all territorial coastal and tributary waters of the Aleutian Islands westward of and including Unimak Pass.

Sec. 207.1 Definition, Chignik area. The Chignik area is hereby defined to include the territorial coastal and tributary waters of Alaska along the mainland shore from Castle Cape (Tulumnit Point) to Cape Kumnik. The waters of Chanklut, Sutwik, and all other adjacent islands are included.

Sec. 208.1 Definition, Kodiak area. The Kodiak area is hereby defined to include the waters of the mainland shore extending from Cape Douglas southwesterward to Cape Kumnik and the territorial coastal and tributary waters of Alaska surrounding Kodiak, Afognak, and adjacent islands, including Chirikof Island and the Semidi Islands.

Sec. 209.1 Definition, Cook Inlet area. The Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area.

Sec. 210.1 Definition, Resurrection Bay area. The Resurrection Bay area is hereby defined to include all territorial coastal and tributary waters of the Gulf of Alaska between Point Gore on the west and Cape Fairfield on the east.

Sec. 211.1 Definition, Prince William Sound area. The Prince William Sound area is hereby defined to include all territorial coastal and tributary waters of the Gulf of Alaska between Cape Fairfield on the west and Point Whitshed on the east.

1941, Cont'd:

Sec. 212.1 Definition, Copper River area. The Copper River area is hereby defined to include all territorial coastal and tributary waters of Alaska between Point Whitshed on the west and Point Martin on the east, including Egg Islands and the other islands between these points.

Sec. 213.1 Definition, Bering River area. The Bering River area is hereby defined to include all territorial coastal and tributary waters of Alaska between Point Martin on the west and Cape Suckling on the east, including Martin Islands, Kanak Island, Wingham Island, Kayak Island, and any other island between Point Martin and Cape Suckling.

Sec. 220.1 Definition, Southeastern Alaska area. The Southeastern Alaska area is hereby defined to include all territorial coastal and tributary waters of Alaska extending from Dixon Entrance on the south to and including Yakutat Bay on the north.

Sec. 221.2 Definition, Yakutat district. All territorial waters within a line extending from Cape Fairweather at 58 degrees 49 minutes north latitude, 138 degrees west longitude, to Mount Fairweather, thence following the international boundary to a point at 140 degrees 28 minutes west longitude, thence south to a point at 59 degrees 36 minutes north latitude, 140 degrees 28 minutes west longitude, thence to Cape Fairweather at the point of beginning.

Sec. 222.2 Definition, Icy Strait district. All territorial waters within a line extending from a point west of Yakobi Island at 58 degrees north latitude, 136 degrees 51 minutes west longitude, to a point at 58 degrees north latitude, 134 degrees 58 minutes west longitude thence north to the light at Point Augusta, thence to the southenstern extremity of Point Couverden, hence to Mount Harris, thence following the international boundary to Mount Fairweather, thence to Cape Fairweather at 58 degrees 49 minutes north latitude, 138 degrees west longitude, thence to the point of beginning at 58 degrees north latitude, 136 degrees 51 minutes west longitude.

Sec. 223.2 Definition, Western district. All territorial waters within a line extending from a point off Cape Ommaney at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, to a point off Cape Edgecumbe at 57 degrees north latitude, 135 degrees 4 minutes west longitude, thence to a point at 58 degrees north latitude, 136 degrees 51 minutes west longitude, thence east to 134 degrees 58 minutes west longitude, thence north to the light at Point Augusta, thence to the southeastern extremity of Point Converden, thence to Mount Harris, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to the point of beginning at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude.

Sec. 224.2 Definition, Eastern district. All territorial waters within a line extending from a point near the Hazy Islands at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude, to the southern end of Cape Decision, thence following the watershed on Kuiu Island to the point on the east side of Kuiu Island at 56 degrees 40 minutes north latitude, 133 degrees 44 minutes 15 seconds west longitude, thence east across Keku Strait, thence across Kupreanof Island, passing north of Duncan Canal, to a point on the east coast of Kupreanof Island at 56 degrees 54 minutes north latitude, thence across Frederick Sound to Horn Cliffs on the mainland, thence to Castle Mountain, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to a point at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, thence to the point of beginning at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude.

1941, Cont'd:

Sec. 225.2 Definition, Stikine district. All territorial waters within a line extending from Horn Cliffs on the mainland to Frederick Point on Mitkof Island, thence to Point Howe, thence to South Craig Point on Zarembo Island, thence to Drag Island in Chichagof Pass, thence to Chichagof Peak on Wrangell Island, thence to Rabbler Point on the mainland, thence to Mount Cote, thence following the international boundary to Castle Mountain, thence to the point of beginning at Horn Cliffs.

Sec. 226.2 Definition, Sumner Strait district. All territorial waters within a line extending from a point near the Hazy Islands at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude, to the southern end of Cape Decision, thence following the watershed on Kuiu Island to a point on the east side of Kuiu Island at 56 degrees 40 minutes north latitude, 133 degrees 44 minutes 15 seconds west longitude, thence east across Keku Strait, thence across Kupreanof Island, passing north of Duncan Canal, to a point on the east coast of Kupreanof Island at 56 degrees 54 minutes north latitude, thence across Frederick Sound to Horn Cliffs on the mainland, thence to Frederick Point on Mitkof Island, thence to Point Howe, thence to South Craig Point on Zarembo Island, thence to Drag Island in Chichagof Pass, thence to Chicagof Peak on Wrangell Island, thence to Rabbler Point on the mainland, thence to Mount Cote, thence following the international boundary to Mount Lewis Cass, thence southerly and westerly along the watershed to a point at 55 degrees 45 minutes 30 seconds north latitude, 132 degrees west longitude, thence in a northwesterly direction through Union Point to the southern extremity of Ernest Point, thence northerly to a point on Etolin Island at 55 degrees 54 minutes 45 seconds north latitude, 132 degrees 21 minutes west longitude, thence in a northerly and westerly direction along the watershed of Etolin Island to a point northwest of the head of Mosman Inlet at 56 degrees 9 minutes 45 seconds north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence southerly to a point at 56 degrees 6 minutes north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence in a northwesterly direction along the watershed to the northern extremity of Point Harrington, thence in a westerly direction to the northern extremity of East Island, thence in a southwesterly direction to the southern extremity of West Island, thence in a westerly direction to a point on the east shore of Prince of Wales Island at 56 degrees 9 minutes 15 seconds north latitude, 133 degrees 2 minutes 45 seconds west longitude, thence southerly along the watershed of Prince of Wales Island to a point at 55 degrees 40 minutes north latitude, 132 degrees 50 minutes west longitude, thence west to a point at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude, thence to the point of beginning at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude.

Sec. 227.2 Definition, Clarence Strait district. All territorial waters within a line extending from a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence south to the international boundary at a point 132 degrees 20 minutes west longitude, thence east along the international boundary to a point at 131 degrees 40 minutes west longitude, thence north to a point west of Point Davison at 55 degrees north latitude, 131 degrees 40 minutes west longitude, thence to the southern extremity of Point Davison, thence northerly along the watershed of Annette Island to the northern extremity of Walden Point, thence to the southern extremity of Gravina Point, thence northwesterly to the northern extremity of Vallenar Point, thence to the southern extremity of Canmanz Point, thence northeasterly along the watershed of Cleveland Peninsula to a point at 55 degrees 45 minutes 30 seconds north latitude, 132 degrees west longitude, thence in a northwesterly direction through Union Point to the southern extremity of Ernest Point, thence northerly to a point on Etolin Island at 55 degrees 54 minutes 45 seconds north latitude, 132 degrees 21 minutes west longitude, thence in a northerly and westerly direction along the watershed of Etolin Island to a point northwest of the head of Mosman Inlet at 56 degrees 9 minutes 45 seconds north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence southerly to a point at 56 degrees 6 minutes north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence in a northwesterly direction along the watershed to the northern extremity of Point Harrington, thence in a westerly direction to the northern extremity of East Island, thence in a southwesterly direction to the southern extremity of West Island, thence in a westerly direction to a point on the east shore of Prince of Wales Island, at 56 degrees 9 minutes 15 seconds north latitude, 133 degrees 2 minutes 45 seconds west longitude, thence southerly along the watershed of Prince of Wales Island to the point of beginning at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude.

1941, Cont'd:

Sec. 228.2 Definition, South Prince of Wales Island district. All territorial waters within a line extending from a point west of the Maurelle Islands at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude, thence to a point west of Cape Addington at 55 degrees 25 minutes 30 seconds north latitude, 134 degrees west longitude, thence to a point southwest of Forrester Island at 54 degrees 40 minutes north latitude, 133 degrees 35 minutes west longitude, thence to the southern extremity of Cape Muzon, thence along the international boundary to a point at 132 degrees 20 minutes west longitude, thence north to a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 35 seconds west longitude, near Point Marsh, thence northerly along the watershed of Prince of Wales Island to a point at 55 degrees 40 minutes north latitude, 132 degrees 50 minutes west longitude, thence to the point of beginning at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude.

Sec. 229.2 Definition, Southern district. All territorial waters within a line beginning at a point on the international boundary at 131 degrees 40 minutes west longitude and following that boundary to Mount Lewis Cass, then southerly and westerly along the watershed to the southern extremity of Caamano Point, thence to Vallentar Point on Gravina Island, thence southerly and easterly along the watershed of Gravina Island to Gravina Point, thence to Walden Point on Annette Island, thence southerly along the watershed of Annette Island to Davison Point, thence west to a point at 55 degrees north latitude, 131 degrees 40 minutes west longitude, thence due south to the point of beginning on the international boundary at 131 degrees 40 minutes west longitude.

Laws and Regulations for Protection of the Commercial Fisheries of Alaska

Definitions of Fisheries Districts:

1955

§ 103.1 Definition. The Kotzebue-Yukon-Kuskokwim area is defined to include all territorial coastal and tributary waters of Alaska from Point Hope southward to Cape Newenham.

§ 104.1 Definition. The Bristol Bay area is hereby defined to include all territorial coastal and tributary waters of Alaska from Cape Newenham to a point on the coast 3 statute miles south of Cape Menshikof.

§ 105.1 Definition. The Alaska Peninsula area is hereby defined to include all territorial coastal and tributary waters from a point 3 statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point at the entrance to Kuiukta Bay including all adjacent islands.

§ 106.1 Definition. The Aleutian Islands area is hereby defined to include all territorial coastal and tributary waters of the Aleutian Islands westward of and including Unimak Pass.

§ 107.1 Definition. The Chignik area is hereby defined to include the territorial waters along the mainland from the western point at the entrance to Kuiukta Bay to Cape Igvak, including adjacent islands.

§ 108.1 Definition. The Kodiak area is hereby defined to include the waters of the mainland shore extending from Cape Douglas southwestward to Cape Igvak and the territorial coastal and tributary waters of Alaska surrounding Kodiak, Afognak, and adjacent islands, including Chirikof Island and the Semidi Islands.

§ 109.1 Definition. The Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area.

§ 110.1 Definition. The Resurrection Bay area is hereby defined to include all territorial coastal and tributary waters of the Gulf of Alaska between Point Gore on the west and Cape Fairfield on the east.

§ 112.1 Definition. The Copper River area is hereby defined to include all territorial coastal and tributary waters of Alaska between Point Whitshed on the west and Point Martin on the east, including Egg Islands and the other islands between these points.

§ 113.1 Definition, Bering River area. All territorial waters between Cape Suckling and Point Martin.

§ 114.1 Definition, Yakutat area. All territorial waters between Cape Fairweather and Cape Suckling.

§ 115.1 Definition, Southeastern Alaska area. All territorial waters between Dixon Entrance and Cape Fairweather.

1955, Cont'd:

§ 117.2 Definition, Icy Strait district. All territorial waters within a line extending from a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, including all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Fairweather, thence to Cape Fairweather at 58 degrees 49 minutes north latitude, 138 degrees west longitude, thence to the point of beginning at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude.

§ 118.2 Definition, Western district. All territorial waters within a line extending from a point off Cape Ommaney at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, to a point off Cape Edgecumbe at 57 degrees north latitude, 136 degrees 4 minutes west longitude, thence to a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude, thence east to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, excluding all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to the point of beginning at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude.

§ 119.2 Definition, Eastern district. All territorial waters within a line extending from a point near the Hazy Islands at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude, to the southern end of Cape Decision, thence following the watershed on Kuiu Island to the point on the east side of Kuiu Island at 56 degrees 40 minutes north latitude, 133 degrees 44 minutes 15 seconds west longitude, thence east across Keku Strait, thence across Kupreanof Island, passing north of Duncan Canal, to a point on the east coast of Kupreanof Island at 56 degrees 54 minutes north latitude, thence across Frederick Sound to Horn Cliffs on the mainland, thence to Castle Mountain, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to a point at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, thence to the point of beginning at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude.

§ 120.2 Definition, Stikine district. All waters within a line commencing at Castle Mountain and passing successively through Horn Cliffs, Frederick Point, Point Alexander, Low Point, Drag Island, Chichagof Peak, Babbler Point, and Mount Cote.

§ 121.2 Definition, Sumner Strait district. All territorial waters bounded on the north by a line commencing on the mainland at Mount Cote and passing successively through Babbler Point, Chichagof Peak, Drag Island, Low Point, Point Alexander, Frederick Point, Horn Cliffs, Kupreanof Island east shore at 56 degrees 54 minutes north latitude, the northernmost end of Duncan Canal, Keku Strait at 56 degrees 40 minutes north latitude, the watershed of Kuiu Island, and the latitude of Cape Decision projected westerly; and on the south by a line following the watershed of Cleveland Peninsula from the International Boundary to Union Point and passing successively through Ernest Point, the southernmost point on Etolin Island, the watershed of Etolin Island, Point Harrington, the northern end of East Island, the southern end of West Island, Prince of Wales Island east shore at 56 degrees 9 minutes 15 seconds north latitude, El Capitan Passage at 56 degrees 7 minutes 36 seconds north latitude, the watershed of Kosciusko Island, the southernmost point on Kosciusko Island, Wood Island, and the latitude of Wood Island projected westerly.

1955, Cont'd:

§ 122.2[3] Definition, Clarence Strait district. All territorial waters within a line extending from a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence south to the international boundary at a point 132 degrees 20 minutes west longitude, thence east along the international boundary to a point at 131 degrees west longitude, thence to Mary Island light, Hog Rocks light, Bold Island light, Race Point, thence to the southern extremity of Gravina Point, thence northwesterly to the northern extremity of Vallenar Point, thence to Point Higgins, thence along the watershed of Revillagigedo Island to Claude Point, thence to Point Lees, thence to Mount Lewis Cass, thence southerly and westerly along the watershed to a point at 55 degrees 45 minutes 30 seconds north latitude, 132 degrees west longitude, thence in a northwesterly direction through Union Point to the southern extremity of Ernest Point, thence northerly to a point on Etolin Island at 55 degrees 54 minutes 45 seconds north latitude, 132 degrees 21 minutes west longitude, thence in a northerly and westerly direction along the watershed of Etolin Island to a point northwest of the head of Mosman Inlet at 56 degrees 9 minutes 45 seconds north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence southerly to a point at 56 degrees 6 minutes north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence in a northwesterly direction along the watershed to the northern extremity of Point Harrington, thence in a westerly direction to the northern extremity of East Island, thence in a southwesterly direction to the southern extremity of West Island, thence in a westerly direction to a point on the east shore of Prince of Wales Island, at 56 degrees 9 minutes 15 seconds north latitude, 133 degrees 2 minutes 45 seconds west longitude, thence southerly along the watershed of Prince of Wales Island to the point of beginning at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude.

§ 123.2 Definition, South Prince of Wales Island district. All territorial waters within a line extending from a point west of the Maurelle Islands at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude, thence to a point west of Cape Addington at 55 degrees 25 minutes 30 seconds north latitude, 134 degrees west longitude, thence to a point southwest of Forrester Island at 54 degrees 40 minutes north latitude, 133 degrees 35 minutes west longitude, thence to the southern extremity of Cape Muzon, thence along the international boundary to a point at 132 degrees 20 minutes west longitude, thence north to a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence northerly along the watershed of Prince of Wales Island to a point at 56 degrees 7 minutes 36 seconds north latitude, thence due west to the east coast of Kosciusko Island, thence southerly along the watershed of Kosciusko Island to the southern extremity of the island at 133 degrees 43 minutes west longitude, thence due south to 55 degrees 40 minutes north latitude, thence to the point of beginning at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude.

§ 124.2 Definition, Southern district.[4] All territorial waters within a line beginning at a point on the international boundary at 131 degrees west longitude and following that boundary to Mount Lewis Cass, thence southerly to Point Lees, thence to Claude Point, thence southerly along the watershed of Revillagigedo Island to Point Higgins, thence to Vallenar Point on Gravina Island, thence southerly and easterly along the watershed of Gravina Island to Gravina Point, thence to Race Point, Bold Island light, Hog Rocks light, Mary Island light, and the international boundary at 131 degrees west longitude.

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Laws and Regulations for Protection of the Commercial Fisheries of Alaska

Definitions of Fisheries Districts:

1956

§ 103.1 Definition. The Kotzebue-Yukon-Kuskokwim area is defined to include all territorial coastal and tributary waters of Alaska from Point Hope southward to Cape Newenham.

§ 104.1 Definition. The Bristol Bay area is hereby defined to include all territorial coastal and tributary waters of Alaska from Cape Newenham to a point on the coast 3 statute miles south of Cape Menshikof.

§ 105.1 Definition. The Alaska Peninsula area is hereby defined to include all territorial coastal and tributary waters from a point 3 statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point at the entrance to Kuiukta Bay including all adjacent islands.

§ 106.1 Definition. The Aleutian Islands area is hereby defined to include all territorial coastal and tributary waters of the Aleutian Islands westward of and including Unimak Pass.

§ 107.1 Definition. The Chignik area is hereby defined to include all waters of Alaska on the south side of the Alaska Peninsula between Kilokak Rocks and the western point at the entrance to Kuiukta Bay, including adjacent islands.

§ 108.1 Definition. The Kodiak area is hereby defined to include all waters from Kilokak Rocks to Cape Douglas, including Kodiak, Afognak, and adjacent islands.

§ 109.1 Definition. The Cook Inlet area is hereby defined to include Cook Inlet, its tributary waters, and all adjoining waters north of Cape Douglas and west of Point Gore. The Barren Islands are included within this area.

§ 110.1 Definition. The Resurrection Bay area is hereby defined to include all territorial coastal and tributary waters of the Gulf of Alaska between Point Gore on the west and Cape Fairfield on the east.

§ 111.1 Definition. The Prince William Sound area is hereby defined to include all waters of Alaska between Cape Fairfield and Point Whitshed.

§ 112.1 Definition. The Copper River area is hereby defined to include all waters of Alaska between Point Whitshed and Point Martin.

§ 113.1 Definition. The Bering River-Yakataga area is hereby defined to include all waters between Point Martin and Icy Cape.

§ 114.1 Definition, Yakutat area. The Yakutat area is hereby defined to include all waters of Alaska between Cape Fairweather and Icy Cape.

1956, Cont'd:

§ 115.1 Definition, Southeastern Alaska area. All territorial waters between Dixon Entrance and Cape Fairweather.

§ 117.2 Definition, Icy Strait district. All territorial waters within a line extending from a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, including all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Fairweather, thence to Cape Fairweather at 58 degrees 49 minutes north latitude, 138 degrees west longitude, thence to the point of beginning at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude.

§ 118.2 Definition, Western district. All territorial waters within a line extending from a point off Cape Ommaney at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, to a point off Cape Edgecumbe at 57 degrees north latitude, 135 degrees 4 minutes west longitude, thence to a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude, thence east to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, excluding all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Ogilvie, thence to the northeast extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to the point of beginning at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude.

§ 119.2 Definition, Eastern district. All territorial waters within a line extending from a point near the Hazy Islands at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude, to the southern end of Cape Decision, thence following the watershed on Kuiu Island to the point on the east side of Kuiu Island at 56 degrees 40 minutes north latitude, 133 degrees 44 minutes 15 seconds west longitude, thence east across Keku Strait, thence across Kupreanof Island, passing north of Duncan Canal, to a point on the east coast of Kupreanof Island at 56 degrees 54 minutes north latitude, thence across Frederick Sound to Horn Cliffs on the mainland, thence to Castle Mountain, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to a point at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, thence to the point of beginning at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude.

§ 120.2 Definition, Silkine district. All waters within a line commencing at Castle Mountain and passing successively through Horn Cliffs, Frederick Point, Point Alexander, Low Point, Drag Island, Chichagof Peak, Babbler Point, and Mount Cote.

§ 121.2 Definition, Sumner Strait district. All territorial waters bounded on the north by a line commencing on the mainland at Mount Cote and passing successively through Babbler Point, Chichagof Peak, Drag Island, Low Point, Point Alexander, Frederick Point, Horn Cliffs, Kupreanof Island east shore at 56 degrees 54 minutes north latitude, the northernmost end of Duncan Canal, Keku Strait at 56 degrees 40 minutes north latitude, the watershed of Kuiu Island, and the latitude of Cape Decision projected westerly; and on the south by a line following the watershed of Cleveland Peninsula from the International Boundary to Union Point and passing successively through Ernest Point, the southernmost point on Etolin Island, the watershed of Etolin Island, Point Harrington, the northern end of East Island, the southern end of West Island, Prince of Wales Island east shore at 56 degrees [illegible] minutes 15 seconds north latitude, El Capitan Passage at 56 degrees 7 minutes 30 seconds north latitude, the watershed of Kosciusko Island, the southernmost point on Kosciusko Island, Wood Island, and the latitude of Wood Island projected westerly.

1956, Cont'd:

§ 122.2[1] **Definition, Clarence Strait district.** All territorial waters within a line extending from a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence south to the international boundary at a point 132 degrees 20 minutes west longitude, thence east along the international boundary to a point at 131 degrees west longitude, thence to Mary Island light, Hog Rocks light, Bold Island light, Race Point, thence to the southern extremity of Gravina Point, thence northwesterly to the northern extremity of Vallenar Point, thence to Point Higgins, thence along the watershed of Revillagigedo Island to Claude Point, thence to Point Lees, thence to Mount Lewis Cass, thence southerly and westerly along the watershed to a point at 55 degrees 45 minutes 30 seconds north latitude, 132 degrees west longitude, thence in a northwesterly direction through Union Point to the southern extremity of Ernest Point, thence northerly to a point on Etolin Island at 55 degrees 54 minutes 45 seconds north latitude, 132 degrees 21 minutes west longitude, thence in a northerly and westerly direction along the watershed of Etolin Island to a point northwest of the head of Mosman Inlet at 56 degrees 9 minutes 45 seconds north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence southerly to a point at 56 degrees 6 minutes north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence in a northwesterly direction along the watershed to the northern extremity of Point Harrington, thence in a westerly direction to the northern extremity of East Island, thence in a southwesterly direction to the southern extremity of West Island, thence in a westerly direction to a point on the east shore of Prince of Wales Island, at 56 degrees 9 minutes 15 seconds north latitude, 133 degrees 2 minutes 45 seconds west longitude, thence southerly along the watershed of Prince of Wales Island to the point of beginning at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude.

§ 123.2 **Definition, South Prince of Wales Island district.** All territorial waters within a line extending from a point west of the Maurelle Islands at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude, thence to a point west of Cape Addington at 55 degrees 25 minutes 30 seconds north latitude, 134 degrees west longitude, thence to a point southwest of Forrester Island at 54 degrees 40 minutes north latitude, 133 degrees 35 minutes west longitude, thence to the southern extremity of Cape Muzon, thence along the international boundary to a point at 132 degrees 20 minutes west longitude, thence north to a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence northerly along the watershed of Prince of Wales Island to a point at 56 degrees 7 minutes 30 seconds north latitude, thence due west to the east coast of Kosciusko Island, thence southerly along the watershed of Kosciusko Island to the southern extremity of the island at 133 degrees 43 minutes west longitude, thence due south to 55 degrees 40 minutes north latitude, thence to the point of beginning at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude.

§ 124.2 **Definition, Southern district.**[2] All territorial waters within a line beginning at a point on the international boundary at 131 degrees west longitude and following that boundary to Mount Lewis Cass, thence southerly to Point Lees, thence to Claude Point, thence southerly along the watershed of Revillagigedo Island to Point Higgins, thence to Vallenar Point on Gravina Island, thence southerly and easterly along the watershed of Gravina Island to Gravina Point, thence to Race Point, Bold Island light, Hog Rocks light, Mary Island light, and the international boundary at 131 degrees west longitude.

Laws and Regulations for Protection of the Commercial Fisheries of Alaska

Definitions of Fisheries Districts:

1957

§ 103.1 **Definition.** The Kotzebue-Yukon-Kuskokwim area includes all waters of Alaska between Point Hope and Cape Newenham.

§ 104.1 **Definition.** The Bristol Bay area includes all waters of Alaska in Bristol Bay east of a line from Cape Newenham to a point 3 statute miles south of Cape Menshikof.

§ 105.1 **Definition.** The Alaska Peninsula area includes all waters of Alaska from a point 3 statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point at the entrance to Kuiukta Bay.

§ 106.1 **Definition.** The Aleutian Islands area includes all waters of Alaska in the Aleutian Islands west of, and including, Unimak Pass.[3]

§ 107.1 **Definition.** The Chignik area is hereby defined to include all waters of Alaska on the south side of the Alaska Peninsula between the southern entrance to Imuya Bay near Kilokak Rocks and the western point at the entrance to Kuiukta Bay, including adjacent islands.

§ 108.1 **Definition.** The Kodiak area is hereby defined to include all waters of Alaska from the southern entrance to Imuya Bay near Kilokak Rocks, to Cape Douglas, including Kodiak, Afognak, and adjacent islands.

§ 109.1 **Definition.** The Cook Inlet area includes all waters of Alaska in Cook Inlet north of Cape Douglas and west of Point Gore, including the Barren Islands.

§ 110.1 **Definition.** The Resurrection Bay area includes all waters of Alaska in the Gulf of Alaska between Point Gore and Cape Fairfield.

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§ 111.1 **Definition.** The Prince William Sound area is hereby defined to include all waters of Alaska between Cape Fairfield and Point Whitshed.

§ 112.1 **Definition.** The Copper River area is hereby defined to include all waters of Alaska between Point Whitshed and Point Martin.

§ 113.1 **Definition.** The Bering River-Yakataga area is hereby defined to include all waters of Alaska between Point Martin and Icy Cape.

§ 114.1 **Definition, Yakutat area.** The Yakutat area is hereby defined to include all waters of Alaska between Cape Fairweather and Icy Cape.

1957, Cont'd:

115.1 **Definition, Southeastern Alaska area.** The southeastern Alaska area includes all waters of Alaska in southeastern Alaska between Cape Fairweather and Dixon entrance.

§ 117.2 **Definition, Icy Strait district.** All waters of the area within a line extending from a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, including all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Fairweather, thence to Cape Fairweather at 58 degrees 49 minutes north latitude, 138 degrees west longitude, thence to the point of beginning at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude.

§ 118.2 **Definition, Western district.** All waters of the area within a line extending from a point off Cape Ommaney at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, to a point off Cape Edgecumbe at 57 degrees north latitude, 136 degrees 4 minutes west longitude, thence to a point at 58 degrees 7 minutes 20 seconds north latitude, 136 degrees 51 minutes west longitude, thence east to Column Point, thence southerly following the watershed along the east side of Lisianski Inlet to 58 degrees north latitude, thence to and along the north shore of Tenakee Inlet to Portage, thence following the watershed to the light at Point Augusta, excluding all waters of Port Frederick, thence to the southeastern extremity of Point Couverden, thence to Mount Harris, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thence west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to the point of beginning at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude.

§ 119.2 **Definition, Eastern district.** All waters of the area within a line extending from a point near the Hazy Islands at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude, to the southern end of Cape Decision, thence following the watershed on Kuiu Island to the point on the east side of Kuiu Island at 56 degrees 40 minutes north latitude, 133 degree 44 minutes 15 seconds west longitude, thence east across Keku Strait, thence across Kupreanof Island, passing north of Duncan Canal, to a point on the east coast of Kupreanof Island at 56 degrees 54 minutes north latitude, thence across Frederick Sound to Horn Cliffs on the mainland, thence to Castle Mountain, thence following the international boundary to Mount Ogilvie, thence to the northern extremity of Shelter Island, thence to the northern extremity of Mansfield Peninsula, thence following the watersheds on Mansfield Peninsula and Admiralty Island to the southern extremity of Point Gardner, thences west to the watershed on Baranof Island, thence following the watershed to the southern extremity of Cape Ommaney, thence to a point at 56 degrees 6 minutes north latitude, 134 degrees 51 minutes west longitude, thence to the point of beginning at 55 degrees 54 minutes north latitude, 134 degrees 34 minutes west longitude.

§ 120.2 **Definition, Stikine district.** All waters within a line commencing at Castle Mountain and passing successively through Horn Cliffs, Frederick Point, Point Alexander, Low Point, Drag Island, Chichagof Peak, Hour Point, Bubbler Point, and Mount Cote.

§ 121.2 **Definition, Sumner Strait district.** All waters of the area bounded on the north by a line commencing on the mainland at Mount Cote and passing successively through Bubbler Point, Hour Point, Chichagof Peak, Drag Island, Low Point, Point Alexander, Frederick Point, Horn Cliffs, Kupreanof Island east shore at 56 degrees 54 minutes north latitude, the northernmost end of Duncan Canal, Keku Strait at 56 degrees 40 minutes north latitude, the watershed of Kuiu Island, and the latitude of Cape Decision projected westerly; and on the south by a line following the watershed of Cleveland Peninsula from the International Boundary to Union Point and passing successively through Ernest Point, the southernmost point on Etolin Island, the watershed of Etolin Island, Point Harrington, the northern end of East Island, the southern end of West Island, Prince of Wales Island east shore at 56 degrees 9 minutes 15 seconds north latitude, El Capitan Passage at 56 degrees 7 minutes 36 seconds north latitude, the watershed of Kosciusko Island, the southernmost point on Kosciusko Island, Wood Island, and the latitude of Wood Island projected westerly.

1957, Cont'd:

§ 122.2 **Definition, Clarence Strait district.** All waters of the area within a line extending from a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence south to the international boundary at a point 132 degrees 20 minutes west longitude, thence east along the international boundary to a point at 131 degrees west longitude, thence to Mary Island light, Hog Rocks light, Bold Island light, Race Point, thence to the southern extremity of Gravina Point, thence northwesterly to the northern extremity of Vallenar Point, thence to Point Higgins, thence along the watershed of Revillagigedo Island to Claude Point, thence to Point Lees, thence to Mount Lewis Cass, thence southerly and westerly along the watershed to a point at 55 degrees 45 minutes 30 seconds north latitude, 132 degrees west longitude, thence in a northwesterly direction through Union Point to the southern extremity of Ernest Point, thence northerly to a point on Etolin Island at 55 degrees 54 minutes 45 seconds north latitude, 132 degrees 21 minutes west longitude, thence in a northerly and westerly direction along the watershed of Etolin Island to a point northwest of the head of Moesman Inlet at 56 degrees 9 minutes 45 seconds north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence southerly to a point at 56 degrees 6 minutes north latitude, 132 degrees 37 minutes 15 seconds west longitude, thence in a northwesterly direction along the watershed to the northern extremity of Point Harrington, thence in a westerly direction to the northern extremity of East Island, thence in a southwesterly direction to the southern extremity of West Island, thence in a westerly direction to a point on the east shore of Prince of Wales Island, at 56 degrees 9 minutes 15 seconds north latitude, 133 degrees 2 minutes 45 seconds west longitude, thence southerly along the watershed of Prince of Wales Island to the point of beginning at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude.

§ 123.2 **Definition, South Prince of Wales Island district.** All waters of the area within a line extending from a point west of the Maurelle Islands at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude, thence to a point west of Cape Addington at 55 degrees 25 minutes 30 seconds north latitude, 134 degrees west longitude, thence to a point southwest of Forrester Island at 54 degrees 40 minutes north latitude, 133 degrees 35 minutes west longitude, thence to the southern extremity of Cape Muzon, thence along the international boundary to a point at 132 degrees 20 minutes west longitude, thence north to a point on the southwest coast of Prince of Wales Island at 54 degrees 44 minutes 21 seconds north latitude, 132 degrees 18 minutes 36 seconds west longitude, near Point Marsh, thence northerly along the watershed of Prince of Wales Island to a point at 56 degrees 7 minutes 36 seconds north latitude, thence due west to the east coast of Kosciusko Island, thence southerly along the watershed of Kosciusko Island to the southern extremity of the island at 133 degrees 43 minutes west longitude, thence due south to 55 degrees 40 minutes north latitude, thence to the point of beginning at 55 degrees 40 minutes north latitude, 134 degrees 17 minutes 10 seconds west longitude.

§ 124.2 **Definition, Southern district.** All waters of the area within a line beginning at a point on the international boundary at 131 degrees west longitude and following that boundary to Mount Lewis Cass, thence southerly to Point Lees, thence to Claude Point, thence southerly along the watershed of Revillagigedo Island to Point Higgins, thence to Vallenar Point on Gravina Island, thence southerly and easterly along the watershed of Gravina Island to Gravina Point, thence to Race Point, Bold Island light, Hog Rocks light, Mary Island light, and the international boundary at 131 degrees west longitude.

Laws and Regulations for Protection of the Commercial Fisheries of Alaska

Definitions of Fisheries Districts:

1958

§ 103.1 *Definition.* The Arctic area includes all waters of Alaska between Demarcation Point and Cape Newenham.

§ 104.1 *Definition.* The Bristol Bay area includes all waters of Alaska in Bristol Bay east of a line from Cape Newenham to a point 3 statute miles south of Cape Menshikof.

§ 105.1 *Definition.* The Alaska Peninsula area includes all waters of Alaska from a point 3 statute miles south of Cape Menshikof to Unimak Pass, thence easterly to the western point at the entrance to Kuiukta Bay.

§ 106.1 *Definition.* The Aleutian Islands area includes all waters of Alaska in the Aleutian Islands west of, and including, Unimak Pass.

§ 107.1 *Definition.* The Chignik area is hereby defined to include all waters of Alaska on the south side of the Alaska Peninsula between the southern entrance to Imuya Bay near Kilokak Rocks and the western point at the entrance to Kuiukta Bay, including adjacent islands.

§ 108.1 *Definition.* The Kodiak area is hereby defined to include all waters of Alaska from the southern entrance to Imuya Bay near Kilokak Rocks, to Cape Douglas, including Kodiak, Afognak, and adjacent islands.

§ 109.1 *Definition.* The Cook Inlet area includes all waters of Alaska in Cook Inlet north of Cape Douglas and west of Point Gore, including the Barren Islands.

§ 110.1 *Definition.* The Resurrection Bay area includes all waters of Alaska in the Gulf of Alaska between Point Gore and Cape Fairfield.

§ 111.1 *Definition.* The Prince William Sound area is hereby defined to include all waters of Alaska between Cape Fairfield and Point Whitshed.

1958, Cont'd:

§ 112.1 *Definition.* The Copper River area is hereby defined to include all waters of Alaska between Point Whitshed and Point Martin.

§ 113.1 *Definition.* The Bering River-Yakataga area is hereby defined to include all waters of Alaska between Point Martin and Icy Cape.

§ 114.1 *Definition, Yakutat area.* The Yakutat area is hereby defined to include all waters of Alaska between Cape Fairweather and Icy Cape.

§ 115.1 *Definition, southeastern Alaska area.* The southeastern Alaska area includes all waters of Alaska in southeastern Alaska between Cape Fairweather and Dixon entrance.

DX IV

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

ENDORSED

FILED
In Open Court
Superior Court
State of Alaska
at Anchorage
Date April 19 1967
Clerk
Deputy

STATE OF ALASKA,

Plaintiff,

Vs.

KONGO HANASAKI, MINA SOTASHI,
AND MIGASHIKA TADAO

Defendants,

No. Cr. 62-141, 62-142, 62-1 A

AGREEMENT

THIS AGREEMENT, made and entered into by and between the State of Alaska, through its duly authorized representative and District Attorney, James C. Nerbs, and the Eastern Pacific Fisheries Company, employer of the above-named Defendants, and the Defendants, by and through their attorney, Peter J. Kalamarides, and approved and consented to by Captain Kongo Hanasaki,

WITNESSETH:

WHEREAS, the above named Defendants and other employees of the Eastern Pacific Fisheries Company of Japan have been engaged in a fishing enterprise in Shelikof Straits off the coast of Alaska, and,

WHEREAS, the State of Alaska having claimed the Shelikof Strait area as waters within the exclusive jurisdiction of the State of Alaska, and

WHEREAS, Eastern Pacific Fisheries Company has contended and still contends that the said waters are international waters not within the exclusive jurisdiction of the State of Alaska, and

WHEREAS, the State of Alaska seeking to effectuate its claim and purpose that the Shelikof Straits are within its exclusive jurisdiction has caused the arrest of the above-named

Defendants and the taking into custody of the fishing vessels _____ and _____ and both parties signatory to this Agreement withing to alleviate the necessity of further arrest, seizure or controversy over the jurisdiction of the said waters, it is mutually agreed as follows:

1. That neither of the parties signatory to this Agreement, to-wit; the State of Alaska nor Easter Pacific Fisheries Company shall by entering into this Agreement, waive, surrender or abrogate any rights, historical or otherwise that they may have had or claim, or may have, or which may be in existence at the time of the signing of this Agreement.

2. Eastern Pacific Fisheries Company agrees not to fish in the Shelikof Straits and specifically not to fish within a base line drawn as follows:

> beginning at a point on the outer perimeter of Barren Islands and proceeding in a Southerly line to the outermost perimeter of Marmot Islands; thence, on a line to the outermost perimeter of Ugak Island; thence on a line to the outermost perimeter of Cape Barnabas; thence, on a line to the outermost perimeter of Black Point; thence, on a line to the outermost perimeter of Two-Headed Island; thence, on a line to the outermost perimeter of Sitkinak Island; thence, on a line to the outermost perimeter of Tugidak Island; thence, on a line to Low Cape and along the coastline to Cape Ikolik; thence, on a straight line diredtly across the Straits to Kilokak Rocks, all according to the outline drawn on the attached Coast and Geodetic Chart No. _____ attached hereto and made a part of this Agreement, which Chart shall be utilized for visual clarification of the base line above described.

3. The members of the Eastern Pacific Fisheries Company shall not fish within three (3) miles of the seaward side of the base line as above-described and as delineated on the attached chart, and shall refrain from any such activity until a final determination shall have been made by a Court of Competent jurisdiction as to whether the Shelikof Straits and adjacent waters are international waters or waters within the exclusive jurisdiction of the State of Alaska.

BEST COPY AVAILABLE

Eastern Pacific Fisheries Company shall leave the area as outlined above within a period of [redacted] days from the signing of this Agreement.

Dated at Dutch Harbor, Alaska, this 15th day of April, 1942.

STATE OF ALASKA

By [redacted]
District Attorney

Defendants,

By [redacted]
Attorney

EASTERN PACIFIC FISHERIES COMPANY

By [redacted]
Captain Kenzo Kamisaka

APPROVED AND CONSENTED TO

[redacted]
Fleet Co-Leader

[redacted]
Fire Control

[redacted]
Nagashima Tsugio

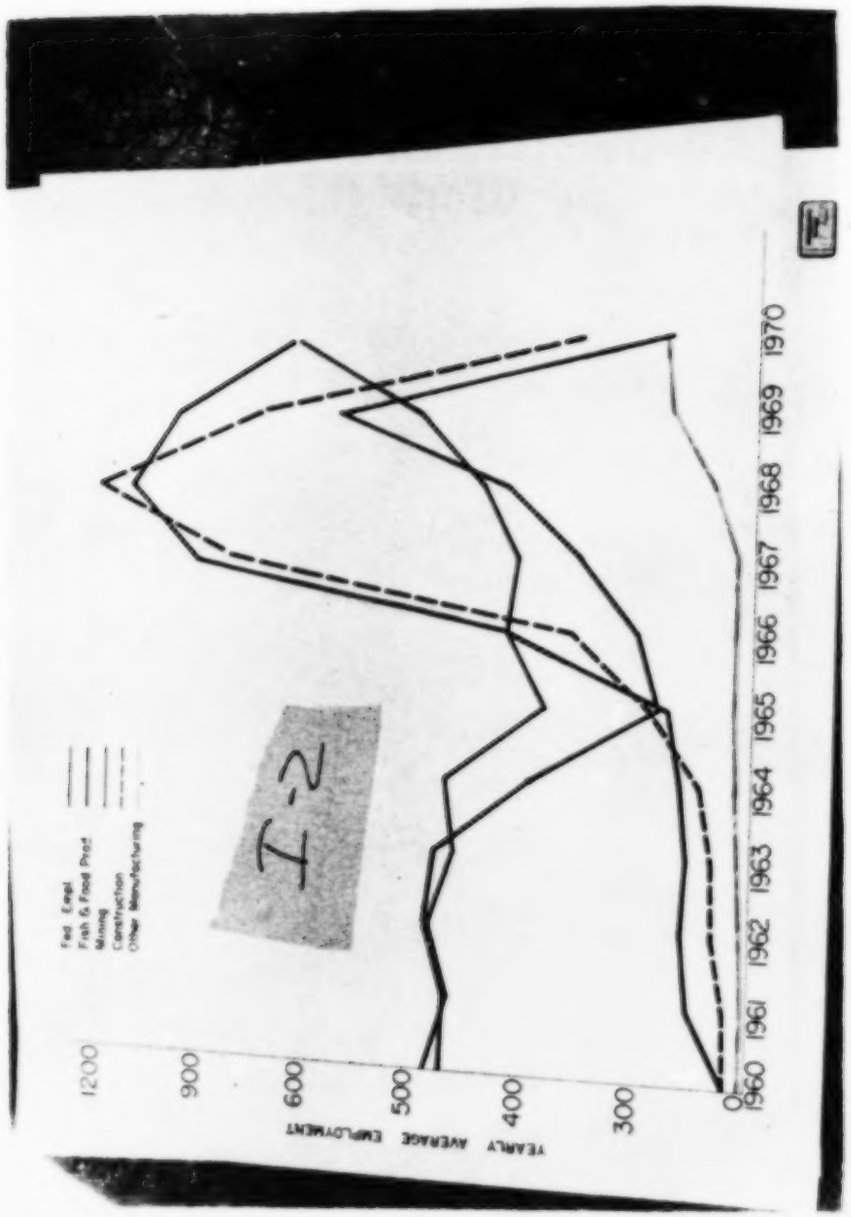
[redacted]
Judge

Jan 22 1944

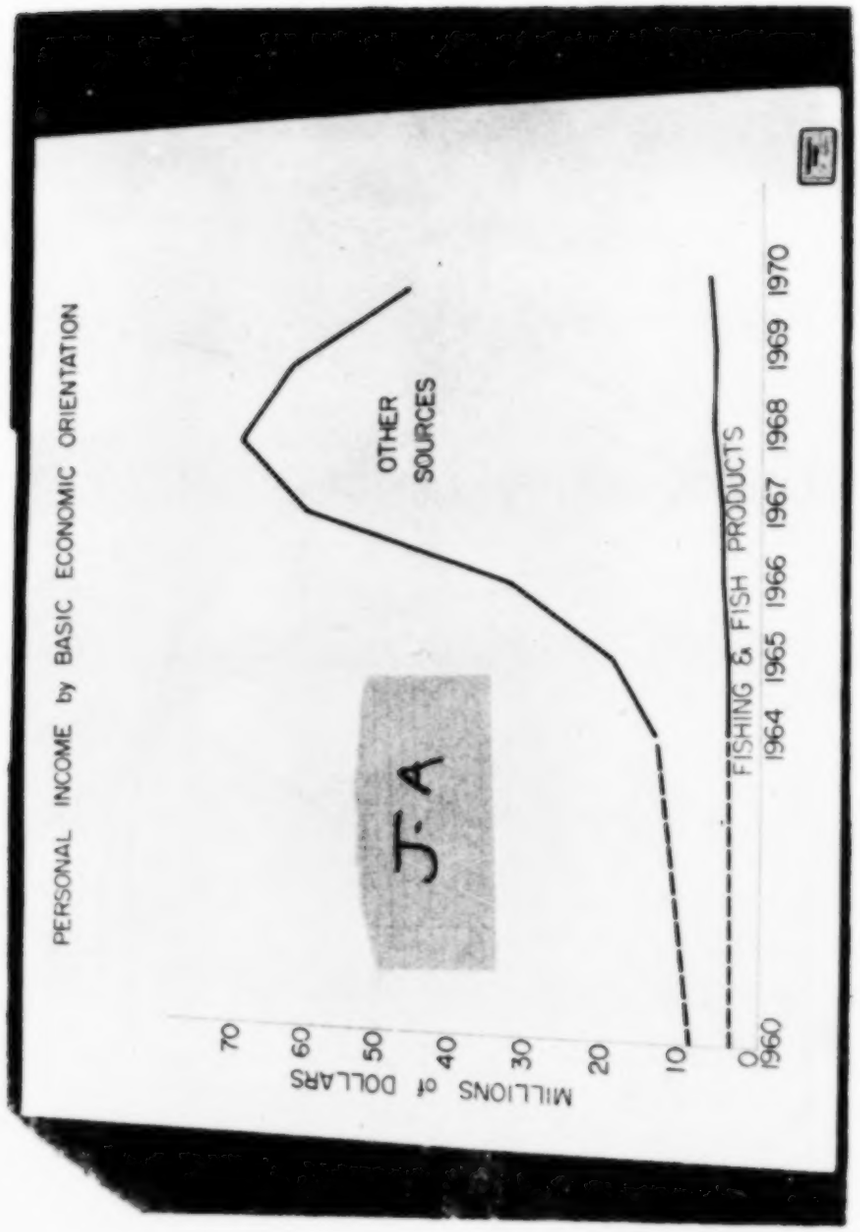
A. M. Hellenthal
Clerk of the Superior Court

[redacted]
Deputy

DX IZ



DX JA



DX JB

ALASKA DEPARTMENT OF FISH AND GAME

CASE REPORT

REGION II

DATE 10/23/70

CARD NO. 1

CASE NUMBER			DEFENDANT'S NAME			SOCIAL SECURITY NO.		
HOM	70	024	DEROSSITT	FRANK	M	542	09	0533
LOCATION AGENCY	YEAR	NUMBER	LAST NAME	FIRST NAME	MI			

RESIDENCE	ADDRESS		
[1] 1 RESIDENT [ ] 4 NONRESIDENT [ ] 2 RES MILITARY [ ] 5 NONRESIDENT MILITARY [ ] 3 GUIDE	2434 Albee St.	EUREKA	CA
	STREET	CITY	STATE

SEX	EYES	HAIR	DATE OF BIRTH	WEIGHT	HEIGHT
[1] 1 MALE [ ] 2 FEMALE	[1] 1 BROWN [ ] 4 GRAY [ ] 2 BLUE [ ] 5 BLACK [ ] 3 HAZEL [ ] 6 GREEN	[ ] 1 BLACK [ ] 5 BALD [ ] 2 BROWN [ ] 6 RED [ ] 3 BLOND [ ] 7 WHITE [1] 4 GRAY	07 11 35 MONTH DAY YEAR	235 POUNDS	6 FEET 02 INCHES

CARD NO. 2

VIOLATION CITED	CONVICTED UNDER	TRIAL DATE	VERDICT	TOT. ST. FINE	TOT. FISH FINE
21330c	HUTCRASS	MONTH DAY YEAR	[ ] 1 GUILTY [ ] 2 NOT GUILTY [ ] 3 APPEAL	DISMISSED DOLLARS	DOLLARS

TOTAL DAYS	DAYS SUSPENDED	MONTHS	[ ] GUILTY [ ] NOT GUILTY [ ] NOLO	07	06	[ ] AM [ ] PM	0250 DOLLARS	JUDGE'S NAME OR COMMISSION NUMBER
0	0	0		MONTH	DAY			SOLDOTNA

CARD NO. 3

ARD USE

OFFENSE CHARGED Used drift net in area closed to drift net CODE LOCATION Cook Inlet

ARRESTED BY Hutgrass IND 7/13/70 LOCATION Kenai River

SHIP OR GAME SEIZED [ ] YES [1] NO

JURISDICTION SEIZED [ ] YES [1] NO

DISPOSITION OF FISH OR GAME

DISPOSITION OF EQUIPMENT

ARRAIGNED BEFORE Commissioner Jess Nicholen ARRAIGNMENT DATE 7/16/70 LOCATION Kenai

PROSECUTING ATTORNEY DEFENSE ATTORNEY

PREVIOUS VIOLATIONS None on record

COMMENTS This case was dismissed because of an error in printing in the regulations (21.330(c)).

SIGNATURE J Nitz (AF)

DEPARTMENT OF FISH AND GAME
DIVISION OF PROTECTION
SUPPORT BUILDING, JUNEAU, ALASKA

FFICER'S REPORT
PORTING DISTRICT Soldotna
SION II OFFICER J. R. Nutgrass

ATURE OF VIOLATION

Commercial Fishing in Closed Waters, Southern District, Cook Inlet, Title 5, Chapter 1, Alaska Administrative Code, Section 21.330 (C).

IME AND LOCATION

The violation occurred on July 6, 1970 at approximately 3:30 p.m., 5 to 7 miles inside the Southern District of Cook Inlet in the Third Judicial District.

EFENDANT

Frank M. DeRossitt, wma, dob-7/11/15, height-6'2", eyes-brown, hair-gray, occupation-Fisherman, resident and mailing address-2434 Albee St., Eurika, California, stated that in all the years that he has fished, he has never violated the law.

NVESTIGATION

It was reported by Ed Martin, Senior Protection Officer of Homer, that the "K22" was observed between 5 and 7 miles inside the Southern District. On July 13, 1970 at 8:20 p.m. while patroling the Kenai River, Frank M. DeRossitt was contacted aboard the vessel "K22" and was advised of the violation.

NTERVIEW

None other than with defendant.

HOTOGRAPHS

None

ITATION

Frank M. DeRossitt was given a violation notice to appear in District Magistrate Court in Kenai, Alaska on July 10, 1970 at 1:30 p.m. for Commercial fishing in closed waters.

IOR VIOLATION

None on record

RAIGNMENT

At arraignment held in District Magistrate Court in Kenai, Alaska on July 16, 1970 at 1:30 pm., Frank M. DeRossitt entered a plea of "not guilty" before District Magistrate Jess Nicholas and requested a trial by the court. No bail was set by the court as Columbia Harris Connery assured the court of DeRossitt's appearance.

7-27-70

DISTRIBUTION DATE

DEPARTMENT OF FISH AND GAME
DIVISION OF PROTECTION
SUBPORT BUILDING, JUNEAU, ALASKA

Page 2
FFICER'S REPORT
PORTING DISTRICT Soldotna
SION II OFFICER J. R. Nutgrass

OSITION

This case is now complete and awaiting trial.

CHMENTS

Violation notice
Complaint

DISTRIBUTION DATE

In the District Magistrate Court of the State of Alaska

...Third... Judicial District, ...Petersburg..., Alaska

State of Alaska

Plaintiff

vs.

FRANK M. DeROSSITT,

Defendant(s)

Complaint

No. D-... Tr.

Title 5, Chapter 1, Alaska Administrative Code, Section 21.3[illegible] (C) - C...JUDICIAL FISH CLOSED WATERS

Complainant, J. E. Hudgens, Border Protection Officer, USFWS,

personally appearing before me and being duly sworn, states that on or about the 6 day of July, 19 77, at or near Cook Inlet, Southern District, in the Third Judicial District, State of Alaska, Frank M. DeRossitt did unlawfully fish commercially with a drift gill net below the Anchor Point latitude, south of Anchor Point latitude being closed to drift fishing.

All of which is contrary to and in violation of Title 5, Chapter 1, Section 21.350 (C) Alaska Administrative Code and against the peace and dignity of the State of Alaska.

This complaint is based on the personal observation of J.E. Hudgens Border Protection Officer, USFWS, Petersburg, Alaska, Fish Management Biologist, ADF&G.

Subscribed to and sworn to before me this 16 day of [illegible] 19[illegible].

Magistrate

JUNEAU

ALASKA DEPT. OF FISH & GAME

VIOLATION NOTICE

DeROSSETT FRANK M

2434 ALDER ST

EUREKA CALIF

7 6 77 215 FOR HALIBUT

FISHERMAN

22467 CAL. FISH

K-32 15467

YOU ARE HEREBY NOTIFIED TO APPEAR BEFORE

☒ MAGISTRATE ☐ F & G OFFICE

AT KENAI ON JULY 16 1977

☐ TO BE NOTIFIED

FOR VIOLATION OF SECTION ... OF

☐ COMMERCIAL ☐ SPORT ☐ SUBSISTENCE ☐ OTHER

OFFENSE DRIFT FISH IN SOUTHERN DISTRICT

7 / 6 / 77 LOCATION

OFFICER

EXPLANATION

DX JE

ALASKA DEPARTMENT OF FISH AND GAME

CASE REPORT

REGION II

DATE 10/23/70

CASE NUMBER			DEFENDANT'S NAME			SOCIAL SECURITY NO.		
HOM	70	025	ASK (LAST NAME)	KJARTAN (FIRST NAME)	J (INIT.)	065	26	4607

RESIDENT	ADDRESS		
	4115 Baker Ave., NW (STREET)	SEATTLE (CITY)	WA (STATE)

SEX	RACE	HAIR	DATE OF BIRTH	WEIGHT	HEIGHT
1 MALE	1 WHITE	1 BLACK	02 (MONTH)	190 (POUNDS)	5 (FEET)
2 FEMALE	2 NEGRO	2 BROWN	22 (DAY)		11 (INCHES)
	3 INDIAN	3 BALD	28 (YEAR)		
	4 ORIENTAL	4 GRAY			
	5 MULTI	5 RED			
	6 OTHER	6 BLACK			
		7 WHITE			

ARD NO. 2					
(LAST NAME)	(COUNSEL FOR DEF.)	TRIAL (MONTH)	TRIAL DATE (DAY)	TRIAL DATE (YEAR)	VERDICT
21330a	HUTGRASS				DISMISSED

ARD NO. 3								
(LAST NAME)	(FIRST NAME)	(INITIAL)	(SUFFIX)	(MONTH)	(DAY)	(YEAR)	(DOLLARS)	(COMMENTS)
0	0	0		07	06	----	0250	SOLDOTNA

PRIME CHARGES Used drift net in area closed to drift net (CODE) (MAX. LIFE) LOCATION Cook Inlet

FOUND BY Nutgrass FOUND DATE 7/13/70 LOCATION Kenai River

WARRANT ISSUED Yes Date to John Ishnlna ARRAIGNMENT DATE 7/16/70 LOCATION Kenai

PRIOR VIOLATIONS None on record

DISPOSITION This case was dismissed because of an error in printing in the regulations (21.330(c)).

J. Nutgrass

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
DIVISION OF PROTECTION
SUBPORT BUILDING, JUNEAU, ALASKA

SON 3747

OFFICER'S REPORT
POSTING DISTRICT Soldotna

DIVISION II OFFICER J. R. Nutgrass

NATURE OF VIOLATION

Commercial fishing in closed waters. Title 5, Chapter 1, Alaska Administrative Code, Section 21.330 (c).

TIME AND LOCATION

The violation occurred on July 6, 1970 at approximately 3:30 p.m. 5 to 7 miles inside the Southern District of Cook Inlet in the Third Judicial District.

DEFENDANT

Kjartan J. Ask, wma, dob-2/22/28, height-5'11", weight-190 lbs., eyes-blue, hair-black, occupation-Fisherman, mailing and resident address, 4115 Baker Ave., N.W., Seattle, Washington, stated, "I don't know that I was below the line". Ask further stated "How can they tell if a boat is below the line"?

INVESTIGATION

It was reported by Ed Martin, Senior Protection Officer of Homer, that the "Scamp" was observed 5 to 7 miles inside the Southern District. On July 13, 1970 at 7:30 p.m. while patroling the mouth of the Kenai River, Kjartan J. Ask was contacted aboard the vessel "Scamp" and advised of the violation.

INTERVIEWS

None other than with defendant.

EVIDENCE

None

PHOTOGRAPHS

None

CITATION

Kjartan J. Ask was given a violation notice to appear in District Magistrate Court in Kenai, Alaska on July 16, 1970 at 1:30 p.m.

PRIOR VIOLATIONS

None on record.

7-21-70

DISTRIBUTION

DATE

DEPARTMENT OF FISH AND GAME
DIVISION OF PROTECTION
SUPPORT BUILDING - JUNEAU, ALASKA

Page 2
OFFICER'S REPORT
REPORTING DISTRICT Soldotna

REGION II OFFICER J. R. Hutgrass

ARRAIGNMENT

At arraignments held in District Magistrate Court in Kenai, Alaska on July 16, 1970 at 1:30 p.m., Jartan J. Ask entered a plea of "not guilty" before District Magistrate Jess Nicholas and requested a trial by the court. No bail was set by the court as Columbia Wards Cannery assured the court of Ask appearance.

DISPOSITION

This case is now complete and awaiting trial.

ATTACHMENTS

Violation Notice
Complaint

DISTRIBUTION

DATE

FORM

In the District Magistrate Court of the State of Alaska

Third Judicial District, Kenai, Alaska

State of Alaska
Plaintiff
vs
KJARTAN J. ASK,
Defendant(s)

Complaint
No. ____ Cr.
Title 5, Chapter 1, Section 21.333 (C) Alaska Administrative Code - COMMERCIAL FISH CLOSED WATERS

Complainant, J. R. Hutgrass, Senior Protection Officer, ADF&G

personally appearing before me and being duly sworn, states that on or about the 6 day of July, 19 70, at or near Cook Inlet, Southern District, in the Third Judicial District, State of Alaska, Kjartan J. Ask did unlawfully Fish commercially with a drift gill net below the Anchor Point latitude, south of Anchor Point latitude being closed to drift fishing.

All of which is contrary to and in violation of Title 5, Chapter 1, Section 21.333 (C) Alaska Administrative Code and against the peace and dignity of the State of Alaska.

This complaint is based on the personal observation of Ed Hartig, Senior Protection Officer, Loran Tripp and Jim Bowers, Protection Biologist, ADF&G.

J. R. Hutgrass

Sworn to and subscribed before me this 16 day of July, 19 70

Magistrate

JUNEAU

ALASKA DEPT. OF FISH & GAME
VIOLATION NOTICE

ASK KARTAN J

411 S BAKER ALY NW

SEATTLE WASH

FISHERMAN

YOU ARE HEREBY NOTIFIED TO APPEAR BEFORE
☒ MAGISTRATE ☐ F & G OFFICE

FOR VIOLATION OF SECTION 21.330(E) OF

OFFENSE TROLLING IN

SOUTHEAST DISTRICT

DX JF

United States Embassy,
Ottawa, Ontario,
October 15, 1957.

Dear Mr. Clark:

I am pleased to transmit to you at the request of the Special Assistant for Fisheries and Wildlife of the Department of State two copies each of Public Law 85-114 approved July 24, 1957 and the regulations issued by the Secretary of the Interior on July 25, 1957 under that law. Public Law 85-114 amends the North Pacific Fishery Act of 1954 by extending the area of the North Pacific Ocean in which the Secretary of the Interior may issue certain fishing regulations. The regulation of July 25, 1957, issued under authority of Public Law 85-114 prohibits salmon fishing by United States nationals except by trolling in certain areas of the North Pacific Ocean.

In connection with the above regulations, I am also pleased to transmit two sets of charts of the North Pacific Ocean off Alaska showing lines upon which the area of the regulation of July 25, 1957 is based. The charts were prepared by the Fish and Wildlife Service of the Department of the Interior.

Sincerely yours,

Adolph Dubs
Second Secretary of Embassy

Enclosures

G. R. Clark, Esquire,
Deputy Minister of Fisheries,
West Block,
Ottawa.

ADubs/mjb

BEST COPY AVAILABLE

DX JG

WILLIAM A. EGAN
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 30, 1962

Honorable George W. Ball
Under Secretary of State
Department of State
Washington 25, D. C.

Dear Mr. Ball:

The State of Alaska has been informed by the Coast Guard that a Japanese mother ship and five catcher boats are sailing for the Kodiak area for the purpose of fishing for herring. According to our information, the Japanese ships are planning to stay three miles from the Kodiak and mainland coasts. In so doing the Japanese obviously take the position that they will be fishing in international waters.

I have been advised that fishing is being conducted in the vicinity of Chirikof Island south of Kodiak, and it appears likely that the fishing operation will extend into Shelikof Strait and perhaps some areas of Cook Inlet. The State of Alaska has claimed jurisdiction over the entirety of these two bodies of water on historical and geographical grounds notwithstanding the usual three mile rule. I am enclosing for your information an opinion issued by the Alaska Attorney General dated December 29, 1959, which sets forth the basis of the State's claim.

The State of Alaska does not wish to cause any international incident by interference with Japanese operations in view of the paramount responsibility of the federal government in the field of foreign policy.

Since this is a matter of serious concern to the State of Alaska, I would appreciate your informing me of what action

Honorable George W. Ball -2- March 30, 1962

the Federal Government intends to take in preventing this foreign fishing fleet from engaging in fishing operations in State waters.

Sincerely,

William A. Egan
Governor

cc: Kirkness
Moody

X

DX JH

APRIL 2, 1962, JUNEAU, ALASKA

HONORABLE GEORGE W. BALL
UNDER SECRETARY OF STATE
DEPARTMENT OF STATE
WASHINGTON 25, D. C.

THIS WILL SUPPLEMENT MY LETTER OF MARCH 30 ON JAPANESE FISHING. MOTHERSHIP OF RANSHU MARU FISHING FLEET HAS BEEN REPORTED BY ALASKA DEPARTMENT OF FISH AND GAME AT 3:00 P.M. APRIL 1 AS BEING 4 MILES OFF UGANIK ISLAND IN SHELIKOF STRAIT AND HER FOUR HERRING CATCHER BOATS AS FISHING OFF THE MOUTH OF UYAK BAY ABOUT FOUR MILES FROM HARVESTER ISLAND. EARLIER REPORTS PLACED MOTHER SHIP WITHIN ONE MILE OF KODIAK ISLAND. ALL ACTIVITIES ARE IN VIOLATION OF ALASKAN FISHERIES LAW. THIS IS A MATTER OF IMMEDIATE AND GRAVE CONCERN TO ALL ALASKANS. WILL YOU NOTIFY ME IMMEDIATELY AS TO PROCEDURE FEDERAL AUTHORITIES INTEND TO FOLLOW. THE STATE CANNOT SIT IDLY BY AND WATCH STATE FISHERIES LAWS OPENLY VIOLATED.

WILLIAM A. EGAN
GOVERNOR

Office of the Governor
phone 6-2546

DX JJ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,
Plaintiff,
vs.
STATE OF ALASKA,
Defendant.

CIVIL NO. A-45-67

AFFIDAVIT OF CHARLES K. CRANSTON

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT.)

I, Charles K. Cranston, Assistant Attorney General for the State of Alaska, being first duly sworn, depose and say:

1. That on December 2, 1971, the State of Alaska received the following response by the plaintiff to the Seventeenth Request for Production of Documents:

Request No. 2: The chart requested by Canada at the Seattle Conference on Coordination of Fisheries Regulations, February 27 through 28, 1957 between the United States and Canada. The chart is described at page 8 of the Summary of Proceedings of the Second Conference on Coordination of Fisheries Regulations between Canada and the United States held at Vancouver, B. C. April 21 through 24, 1959, a copy of pages 8 and 9 in said summary is attached hereto as Exhibit No. B. The summary of proceedings may be further identified as Exhibit 11 to the second deposition of Ronald C. Naab.

Response to Request No. 2: Ozalid copies of documents which may be responsive to this request were located in the office of the National Marine Fisheries Service in Juneau, Alaska. They have been transmitted to the Marine Resources Section, Land and Natural Resources Division of the Department of Justice, where they may be inspected and copied. They could be transmitted to Juneau if the State would prefer to inspect them there. We have

DEPARTMENT OF LAW
OFFICE OF THE
ATTORNEY GENERAL
ANCHORAGE BRANCH
308 H ST. SUITE 105
ANCHORAGE ALASKA 99501
PHONE 272-1592

DEFENDANT'S EXHIBIT
JJ-Cran
A-45-67(a)

not been able to locate any additional copies of these documents.

2. That on or about December 6, 1971, I inspected in the office of Jonathan I. Charney, at the Department of Justice, Washington, D.C., the documents described in the above response as those which may be responsive to this request.

3. That these documents which I inspected are the documents from which Exhibits GH-1 through GH-12 were copied.

4. That the documents which I inspected are the same charts and overlays which were produced at the deposition of Ronald C. Naab, taken August 20, 1971 and referred to therein as Exhibit 8.

DATED at Anchorage, Alaska, this 26th day of January, 1972.

Charles K. Cranston

SUBSCRIBED and SWORN to before me the place and date above written.

NOTARY PUBLIC FOR ALASKA
My Commission Expires 5-25-75

DEPARTMENT OF LAW
OFFICE OF THE
ATTORNEY GENERAL
ANCHORAGE BRANCH
100 N. ST. SUITE 105
ANCHORAGE ALASKA 99501
PHONE 272-1552

UNITED STATES OF AMERICA,
Plaintiff/Appellant,
v.
STATE OF ALASKA,
Defendant/Appellee.

No. 73-2400
(D.C.# A-45-67)

RECEIVED
JUN 19 9 25 AM '74
CLERK'S OFFICE

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Edward F. Bradley, Jr. counsel for the U.S.A., and good cause appearing, IT IS ORDERED that the issuance, under Rule 41 (a) of the Federal Rules of Appellate Procedure, of the certified copy of the judgment of this Court in the above cause be and hereby is stayed pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari to be made by the U.S.A. hereto, provided such petition is filed in the Clerk's Office of the Supreme Court of the United States on or before June 23, 1974

In the event the petition for writ of certiorari is granted, then this stay is to continue pending the final disposition of the case by the Supreme Court of the United States.

United States Circuit Judge.

90-4-5

DATED: SAN FRANCISCO, CALIF.
June 12, 1974

JUN 18 1974
LAND AND NAT. RES. DIV.

Supreme Court of the United States

No. 73-1888

United States,

Petitioner,

v.

Alaska

ORDER ALLOWING CERTIORARI. Filed December 9, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth ---------- Circuit is granted.